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POLITICAL SCIENCE QUARTERLY

NATIONAL DEFENSE AND POLITICAL SCIENCE

IT is a striking paradox that, although military defense has been a perennial problem of the American people since the first colonists landed on this continent, there has been no conscious, integrated and continuous study of military security as a fundamental problem of government and society. It is another paradox that, although we live in a war-like world and have ourselves been participants in large-scale wars, there has been almost no systematic consideration by American scholars of the rôle of war in human affairs—this despite the transparent truth, however deplorable, that war is a recurrent phenomenon which from time to time transcends all other human activity and assumes command of our lives, our fortunes and our destiny.[1] Even in time of peace the shadow of war falls upon the world in the form of naval and military establishments which determine in large measure how we shall spend our energies and our substance. In fact, in the present stage of world affairs, military organization absorbs an ever increasing part of the productive capacity of mankind, tends to determine the character of our social structure, and threatens in various ways to revolutionize some of our most cherished institutions and ways of life.

Quite aside from this inherent interest, the problems of national defense have a claim upon the political and social

[1] As democracy is based upon belief in the power of public opinion and other moral sanctions, we have understandably given great weight to the problem of collective security. It is now necessary that we restore a balance as between studies of national power and studies dealing with international co-operation.

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sciences. The need of security against aggression is, as Hamilton said, "the most powerful dictator of national conduct." It involves one of the most delicate of political problems—the reconciliation of liberty and authority, the provision of the maximum degree of security with the highest degree of freedom. It is, indeed, intimately related with all other objectives of organized society; in the Preamble to the Constitution of the United States, the "common defense" is significantly enough linked with the establishment of justice, the insurance of domestic tranquillity, the promotion of the general welfare, and the preservation of "the blessings of liberty to ourselves and our posterity". In short, national defense is a basic function of government in a world of competitive national states; the world being as it is, perhaps it is *the* basic function. As one American student of government has put it: "By general consent this is the supreme consideration of every government. At all events, no other appeal commands such widespread popular support, receives such undivided allegiance. Those who resist it are loaded with the heaviest social opprobrium and those who betray it are stamped with the highest of crimes, treason."

Nor is the organization of defense the problem of the soldier alone. Under parliamentary and representative government, particularly as exemplified by Great Britain and the United States, the control of military affairs by civilian authority has been one of the foundation stones of the arch of freedom. This does not necessarily imply that there is any inherent conflict between two mutually antagonistic forces, civil and military. On the contrary, it is essential that there be effective collaboration between the civilian, military and naval authorities in the interest of maximum efficiency and, of coördinate importance, that there be adequate and intelligent military implementation of national policies.

There is ample evidence that civilians and soldiers alike have come to recognize that it is vital both to military efficiency and to national integrity that war and the costly and elaborate preparation for war shall not be reserved either to technicians

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alone or to civilians alone. The organization of security and, in the event of war, the organization of victory require that there be sympathetic, intelligent and unreserved collaboration between the several groups which contribute to the total military effort. A blunt civilian Clemenceau said: "War is much too important a business to be left to the soldiers." A distinguished British officer, Sir Frederick Maurice, agreed that as war requires the employment of the whole resources and the maximum power of the nation, it is "clearly not a matter to be left to soldiers or sailors, nor would any responsible soldier desire it to be so left." The mere mention of the names Rathenau, Lloyd George and Baruch will suggest what civilian influence meant in the last war. Even in the realm of military technology, one can point to innumerable instances in which civilian contributions concerning even the employment of weapons of war—as well as their invention, development and supply—were outstanding and sometimes controlling: this was notably the case in questions involving tanks, convoys, artillery fire, machine guns and submarine detection.

What was true in the war of 1914-1918 is likely to be even more true in the present struggle. No modern war can be waged without the national effort going far beyond the boundaries of technical military efficiency into almost every realm of civilian activity. The British and American officer of today is encouraged to widen his horizons of knowledge to include an understanding of social and economic questions. There is no reason, in turn, why the civilian should not bring military affairs, which so vitally affect the nation at large and even himself as an individual, into his purview. After all, military problems do not dwell in the realm of the occult, the supra-temporal, or the recondite, for "secrecy" is largely confined to matters of *matériel*. Military problems are susceptible of analysis, criticism and practical contributions by informed laymen, and factual data upon which to base sound scholarship are generally accessible. Indeed, it is imperative that laymen, especially scholars, concern themselves with the problem of national defense, for failure to do so may be disastrous to the success of rearmament or of the war effort. Germany has be-

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come the foremost military power on the Continent of Europe not only because of the technical efficiency of German armed forces, but also because of acute realization of the rôle which theoretical studies of a non-technical character may play in modern war. Such studies existed in Imperial Germany but have been extended and intensified under the Nazis, with the result that Germany entered the present war well prepared in the non-military as well as the military phases of warfare. In fact, the "bloodless victories" which have distinguished the Hitler régime were the outgrowth of a long-range strategy which took into account all the known factors of economics, psychology, domestic politics, class prejudice, inertia, and the like. A covert war has been waged against Western Europe since 1933, with its victims seemingly unaware even that the struggle was going on. Comprehension of the true state of affairs was a civilian rather than a military responsibility.

As against German preparedness, in which civilians in general and the universities in particular played an influential part, British, French and even existing American efforts seem feeble. The result is attributable not merely to palsied leadership in London and Paris, but also to a fundamental failure to comprehend the intimate interrelationships of politics, economics, and military strategy.[2] There has been a lamentable paucity of civilian discussion of geographic and demographic factors in international politics. There has been a good deal of muddle-headedness concerning elements of military power; *potential* strength has been complacently confused with *existing* strength, although only the latter is available to initiate or to resist sudden and overwhelming attack. There has been woeful disregard of the strategic implications for Britain and France of the war in Spain. Whereas Count Ciano was quoted as saying that "There are no longer frontiers; there are only geographical and strategic positions", statesmen of the democratic powers were continuing to judge the situation by nineteenth-century concepts of politics. There has been vir-

[2] It is appropriate at this point to explain that the term "military" is intended throughout this manuscript to include not merely the army but the navy and air forces as well.

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tually no informal liaison between civilians and soldiers; one of the foremost British political leaders, a potential Prime Minister, and now a member of the Inner Cabinet, told the writer of this article, in 1938, that he had no acquaintance with any British army or navy officer and had no means of knowing the views of the armed services on Spain and other vital questions. Mutual suspicion between civilians and professional officers—which has been typical of Anglo-Saxon society, and which can be broken down only by continuous collaborative efforts in time of "peace" as well as in time of war—has prevented an over-all view of the situation, growing out of intelligent, widespread and frank discussion.

In the absence of a general scholarly interest in the political and social aspects of national defense, the field was largely left to publicists of the Liddell Hart school, whose writings contributed to the general collapse by preaching the doctrines, unwarranted by experience or reason, of limited liability, superiority of the defense (psychological and moral as well as tactical), and the alleged inability of either side to "win" a war. It will never be possible, of course, to eliminate popularizers of a special thesis. But if the Liddell Harts had been balanced by, say, two-score scholars who had been trained in the fundamental disciplines, who understood the rôle of military force in statecraft, and who constituted a body of genuinely informed civilian experts in the larger phases of warfare—to say nothing of the elementary facts of history—the discussion of military affairs in Britain would have been on an entirely different level and might have had entirely different results. What is true of Britain was likewise true of France. Futhermore, in France the conservatism of the General Staff operated to prevent acceptance of more advanced military, as well as civilian, thought.

The truth of the matter is that, in a democratic society, it is imperative that we have the widest possible discussion of military problems, conducted on the highest possible plane. In the absence of such discussion, we cannot formulate intelligent and practicable foreign policies or, for that matter, domestic policies. Few military decisions (such, for example,

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as the acquisition and fortification of bases or the choice of types of ships and aircraft) are without widespread political repercussions. Likewise, political decisions—hemispheric defense, the Monroe Doctrine, the balance of power, alliances, aid to Britain and China—must be susceptible of military and also of economic implementation unless they are to be largely devoid of result. There must be an understanding of the impact of a vast armament program—what amounts in fact to national mobilization before M-day—upon the normal activities of a peaceful people: economics, education, psychology and morale, the standard of living, the social services. It must be clearly comprehended that in and of itself the financing of the military effort will have portentous effects upon capitalism and democracy. It must be kept in mind that vested economic interests within the nation do not always coincide with the national interest vis-à-vis foreign powers and that the resulting conflicts of interest must be frankly faced and intelligently and fairly resolved. (For example, independence for the Philippines was legislated not primarily with reference to the political and strategic position of the United States in the Pacific area, but because of the persistent pressure of the beet and cane sugar interests and other lobbies at Washington.) In short, there must be effective coördination of military with foreign and domestic policies, so that there may emerge a grand strategy which will assure that the will and the arms of the nation shall be so integrated that war shall be prevented or, failing this, that the nation shall enter war with the maximum chance of victory. Strategy is not merely a concept of war time but an inseparable element in statecraft at all times; as such it is a legitimate and, indeed, an unavoidable concern of the social scientist. Only a narrowly restricted terminology would define strategy as the science and art of military command. If this be true, as it seems to be, then the scholar and the soldier have indispensable and mutually complementary tasks to perform. The mere appropriation of vast sums for armaments will not give assurance of effective defense. These arms must be supplemented by and related to a comprehensive national policy. And the formulation of

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such policy is a function of the executive and legislative branches of the government. If they are to arrive at the desired goal, they must have clearly before them the facts upon which alternatives may be weighed and decisions arrived at. It is the function of scholarship to make the facts available and, over a period of years, to provide by education a trained personnel which will understand the essential place of military affairs in the science and operation of government.

It must be admitted that political and social scientists have not heretofore undertaken adequate systematic inquiry into the problems of defense and strategy. An examination of contemporary textbooks on politics, economics and international relations reveals that military affairs are a conspicuous lacuna or, at best, have been treated as incidental and peripheral in character. This is not surprising, for although writers on politics, since the days of Aristotle and Plato, have given some attention to military subjects, and although Machiavelli, Sir Francis Bacon, Adam Smith, Alexander Hamilton and Benjamin Franklin, among others, have shown an acute understanding of the rôle of strategy in statecraft, the treatment of military affairs throughout the nineteenth century and until recently in the twentieth has been left to soldiers writing for soldiers rather than civilians writing for civilians.

The truth seems to be that liberalism and democracy, being predicated upon the ideals of peace and progress and a brotherhood of man, have viewed with repugnance an international society based upon armed, competitive nation-states. Liberals and democrats likewise were suspicious (at times with justification) that defense was inextricably connected with imperialism, aggression, vested armament interests, political conservatism, and a potentially militarized society. Scholars shared these suspicions and therefore avoided the problem altogether. But by abandoning the field to others, they solved none of the problems and resolved none of their fears. It is therefore essential that we return to an earlier tradition, which treated military problems as an inherent factor in the science of government and politics. And, in view of the integrated character of the modern world, they must

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now be regarded as one of the most important concerns of economics and social psychology as well.

The curricula of American colleges and universities have, with only rare exceptions, been destitute of discussion of the many-sided problems of defense. Even in military history we have been negligent. For example, it is foreigners rather than Americans who have had the fullest realization of the great significance to strategy and tactics of the Civil War and, until recently, it was Englishmen rather than Americans who contributed the outstanding biographies of certain of our military leaders. Few civilian societies have actively interested themselves in national defense, except for purposes of propaganda; some have had primarily antiquarian interests. The most successful professional writing on military and naval affairs in the United States has been done by men like Mahan and Upton, who were popularizers and propagandists as well as technicians. It is only recently that military criticism has become a feature of American journalism; military critics are few in number, and not all of them possess an adequate knowledge of history, economics, psychology and politics, nor should they be expected to possess such knowledge in a position where different skills are called for. But the avidity with which military journalism is read is an indication of the potentialities which exist for more adequate treatises on defense, written in accordance with the canons of scholarship. The influence of the writer on military affairs may be widespread, far transcending the bounds of the casual public and reaching into high places—of this truth Mahan affords an outstanding example. What is essential to the national interest is that the writing be above the transitory and the superficial.

Within the government itself there has, as a rule, been insufficient thought on questions of defense and insufficient attention to the formulation of military policy. The committees of the House and Senate which deal with military and naval affairs (including the committees on appropriations) have not always risen above partisan considerations and frequently have shown a tendency to treat national defense as a "local issue" (as in the location of arsenals, army posts and

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naval stations). An occasional chairman of unusual competence lifts a committee above the average, but, in the large, Congress has been remiss in making appropriations with a view to long-range policies, rather than *ad hoc* considerations; and the same is true of the executive arm. The President of the United States is the commander-in-chief of the armed forces, but the exigencies of his office rarely give him time for critical thought on defense subjects, except in periods of impending war and only to a limited degree even then.[8] His immediate subordinates, the Secretaries of War and of the Navy, have not generally been men of high caliber; and as compared with Secretaries of State they have been distinctly mediocre. When a really capable statesman like Calhoun, Jefferson Davis, Root, Baker, or Whitney holds the War or Navy portfolio it is an unusual rather than a frequent occurrence. There is no Council of National Defense, similar to the Committee of Imperial Defense in Great Britain, charged with continuous and non-partisan study of military affairs. It is no exaggeration to say, furthermore, that presidential messages and quadrennial party platforms have, with a few notable exceptions, contributed little more than a collection of platitudes.

All this is understandable in view of the peculiar geographical position of the United States, its absorption for a century and a half with domestic affairs, the deep-rooted suspicion of what the Fathers called "swollen military establishments", and the protection which was offered us by the balance of power in Europe. But this state of things has been deplorable in this respect: it has prevented us from assessing clearly the extent of our potentialities and the nature of our shortcomings. As a French minister wrote to his government about a century ago, "one would say that there is something providential in the success that crowns the enterprises of the young republic, for it seems to act more by the instinct of its destiny than by serious reflection on its power."

[8] Professor Lindsay Rogers has recently pointed out that Hitler's frequent periods of contemplation at Berchtesgaden may be an important factor in the formulation and execution of German strategy. *Foreign Affairs*, volume XIX, pp. 5-6 (October 1940).

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Whatever may have been the rôle of instinct and Providence heretofore, the American people is now aware that something more is needed. We live in an age of stark military power and have just had the experience, unique in our history, of seeing a military alliance directed against us. The new coalition may not be a "nightmare" to us (to borrow a phrase from Bismarck) but it certainly is not a sedative. We now know that conventional military standards and time-honored concepts of defense are no longer relevant to our security. Confident reliance upon the militia and the citizen soldier—of which our political literature of two hundred years is redolent—has given way to a grim determination to recruit an army of maximum efficiency by means of Selective Service. Facing the possible destruction of an Anglo-American hegemony on the seas, we are determined if necessary and if possible to substitute a primacy of our own. We are keenly aware that bold strokes are required in the political field as well; hence the trade of destroyers for bases, which ranks with the Louisiana Purchase and the Monroe Doctrine as a broadly conceived measure of defensive strategy. We are slowly gaining consciousness that Total War can be met only by planning for Total Defense and are therefore entering upon an era which will bring radical alterations in our attitudes as regards military and naval power. This is not of our choice, nor, judging by contemporary evidence, is it likely to be a transitory phase in the history of the world.

The study of military affairs is not an emergency matter, although the emergency gives it added importance and, indeed, a character of importunity. If we now had on hand a reserve of trained scholars who had devoted any considerable portion of their lives to problems of strategy, they could be of inestimable service to the nation. Staff officers have been transferred to service with troops, and the Army War College has been closed because of the shortage of commissioned personnel in the higher ranks. There is now no group of trained personnel engaged in theoretical studies—a deficiency which expert scholars might overcome were they available in any number. In general, however, what is involved is not tem-

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porary measures to meet an emergency but a long-term program of research and, ultimately, of teaching which will enable the United States in times of peace as well as in times of crisis and war to build up a body of knowledge and a corps of scholarly experts who can help in the formulation of public policy and who can contribute to an understanding of the military problems and the military power of the nation.

It is not, of course, suggested that there should be any competition with the permanent personnel of the armed forces. The effort here proposed would be complementary thereto and would attempt to open up entirely new fields of investigation and research. Lest inquiries be conducted in water-tight compartments, there should, indeed, be cordial coöperation between civilian and military experts. The social scientist can keep constantly to the fore the political, psychological and economic factors which are of ever increasing importance in national defense. He can deal with the dynamics of foreign and military policy. He can explain the rôle which considerations of military security have played in the history of the world in general and of the United States in particular. Indeed there are phases of human society and political organization—mercantilism, Anglo-American constitutional history, autarchy, imperialism, totalitarianism, for example—which cannot altogether be understood without reference to the rôle which military factors have played. Our failure to keep in mind the hold on statesmanship and on the popular mind of military security accounts in part for some of the eclectic interpretations of American history from 1914 to 1917 and of the course of European politics between 1919 and 1939.

There are certain subjects which the civilian can take within his purview but which the professional officer can deal with not at all or only with the greatest reserve. Every commissioned officer is subject to severe restrictions, explicit or implied, in dealing with questions which border on the political. In time of crisis, as at present, official orders make it difficult for officers to write or speak on anything but the purely technical, military aspects of international relations and national policy. This is probably as it should be. But it

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would seem to be in the public interest that competent persons be free to speak with authority at all times, and particularly in times of emergency, and that they speak as individuals without official fear, favor, or bias. This the scholar can do.

Questions of strategy fall into three general categories: first, those which are primarily or predominantly political, even though they be of prime importance to military policy (such, for example, as the fortification of a position like Guam, or the future retention of bases in the Philippine Islands, or the acquisition of leases on strategically important areas in Latin America or the Pacific); second, those which are predominantly military, even though they have political implications (such as the type of naval vessel and military plane to be constructed); third, those which are in a kind of "twilight zone" between the political and military. In the first and third, the scholar can speak with authority and without reserve, and he may have something to contribute even in the second; the second is preëminently the field of the armed forces, although officers may appropriately express opinions on the others, subject to the limitations imposed upon them by official order or by the traditions of the services and the usual practice of democracies, which is that policy shall primarily be the responsibility of the civilian rather than the military branch of the government.

The professional officer, too, suffers from some disqualifications which would not afflict the civilian working in the field. The strength of tradition, precedent and "regulations" operates on even the most competent of officers. Although the method of selection for the Military and Naval Academies is the most democratic conceivable (in marked contrast to the situation which has heretofore prevailed in Europe as a whole), the cadets and midshipmen come from what seems to be a fairly uniform social and intellectual background, and it is by no means certain that at present the academies are attracting to the service their fair share of the outstanding young men of the nation. The educational methods of the academies, furthermore, tend to encourage *esprit de corps* and a degree of uniformity which, although desirable and indeed essential, does

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not always develop independence of judgment or conspicuous initiative; and in the technical services, such as engineering and naval architecture, there might well be further utilization of what lay education could offer. (Parenthetically it might be pointed out that some layman might appropriately undertake a study of military and naval education in the United States similar to the study of Abraham Flexner on medical education, which revolutionized the methods used in the training of physicians.)

The hierarchical organization of the services (which is unavoidable, of course) has notable disadvantages. This is the more true where, as in ordinary circumstances in the United States, promotion is necessarily slow and seniority frequently weighs more heavily in the scales than conspicuous ability and independence of judgment. It is too much to ask an officer to jeopardize his career by furthering principles contrary to those which are more generally accepted. Futhermore, the pressing demand for officers with troops and with the fleet, together with the assignment of commissioned personnel to administrative posts, makes it difficult and sometimes impossible for the best brains of the services to be devoted to theoretical studies and to the formulation of policy. The civilian suffers from none of these disadvantages and, in addition, his voice is likely to carry more weight because he is independent and is presumed to have no interest to serve other than the cause of scholarship and the welfare of the nation.

This brings up another point of almost equal importance to the discussion. A study of the defense policies of the United States, especially of appropriation bills, would demonstrate that there is a sort of "fever chart" of public and official interest. In times of acute crisis, of fear or panic, the people will demand and Congress will enact legislation enlarging the Army and Navy without regard to rational considerations and certainly without regard to long-term policy. War scares are a kind of intoxication. They secure the adoption of measures which otherwise would be deferred or rejected. But like all forms of intoxication and profligacy, such scares are followed by periods of apathy, in which the ordinary demands of

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prudence are ignored and the national defense is allowed to fall into a state of neglect. In short, the military history of the United States is marked by alternate periods of feast and famine. What seems to govern the degree of preparedness is a kind of abnormal psychology, rather than any reasoned and systematic consideration of national defense as one of the co-ordinate functions of government. Fear and recurrent alarms are no basis for a public policy, but it must be admitted that fear on the one hand and indifference on the other have frequently been the determining factors in military and naval appropriation bills in most democracies, including the United States. It goes without saying that abrupt peaks and depressions in the chart of such appropriations are bad for the armed services. But they show also an unhealthy, febrile condition in the whole body politic and have, in particular, unfortunate consequences to the national economy. Means must be found to build up a healthy defense system which will not receive shots-in-the-arm in periods of alarm and powerful soporifics in periods of comparative calm.

This healthy state of affairs cannot be brought about, it may confidently be predicted, unless there be an entirely new approach to the problem of national defense. The professional officer is powerless to deal with the phenomenon, because, in the public eye and in the Congressional mind, he is associated with a vested interest. In times of apathy he is regarded with suspicion, in time of crisis with undue reverence. Only the scholar is capable of maintaining a *continuous, objective* and *documented* study of the problem. Experience shows that comparable results cannot be expected from the public, the politician, the government, or even the armed services. Furthermore, only the scholar can create a vast reservoir of competence in the field. The people whom he teaches and for whom he writes today will be the voters, teachers, reserve officers and statesmen of tomorrow. No such reservoir of competence now exists, but it requires no great imagination to see, did it exist, what it would mean to the national morale, the national economy and the national security in the existing crisis. Studies now undertaken will have some influence, of

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course, before the present emergency is passed. But their greatest importance will be in laying sound and broad foundations for a national military policy in the longer future which will not merely be concerned with a passing crisis—however menacing and prolonged—but will be intimately related to our political ideals, geographical position, industrial resources, governmental institutions, standard of living, and long-run national objectives.

In the past our apparent invulnerability, combined with the balance of political and economic forces in Europe and the Far East, made a coherent military policy, however desirable, discretionary rather than imperative. Such is no longer the case, for the tragic fact seems to be that for some time to come the world will be ruled by power politics in which the United States has already taken a conspicuous rôle. The American Way appears destined to receive an armor-plating and a streamlining. The militarization of America, however, would be a tragedy of the first magnitude. But there can be no militarism where there is a nice balance and an effective coöperation between professional and civilian interest in, as well as control over, political and military strategy. Unless, therefore, the social scientist takes a conspicuous and far-sighted position of leadership in the process of planning the national defense, we shall lose some of the values which it is essential that we retain and we shall, in the end, be the less rather than the more secure.

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THE LAW AND SCIENTIFIC METHOD

EVERYWHERE one looks, today, over the field of current legal scholarship one sees evidences, if only scattered, of an earnest desire and a diligent effort to apply to this the most traditional of all social arts that method for the advancement of understanding which we have come to associate with modern science. Until recently this movement was most conspicuous on the Continent—less so in England. Today its most promising, if not its most advanced, sector seems to be in the United States. To one, like myself, whose training has been in the "exact sciences" and who views this movement as a part of the general drive to apply the methods of these exact sciences to the whole subject of society, the somewhat toddling first steps in the field of law are most sympathetic. It becomes, therefore, a matter of deep concern to such an outsider when he perceives that progress along this line is being held up, not only by the very real obstacles that are necessarily present, but even more so, on the one hand, by what seems to be a widespread misunderstanding of the nature of scientific method, and, on the other hand, by a conventional view of the character of legal material, which renders it almost incapable of being dealt with by such method. Since these latter obstacles are wholly unreal and exist only in the minds of those whose ways of thinking have been formed in the peculiarly non-scientific channels of traditional legal training, they are susceptible of being conjured away by treatment. What follows is an attempt to "lay these ghosts".

It must be admitted at the outset that one insuperable obstacle sets a definite limit to this movement. The law is primarily a system of value judgments applied to human conduct. In spite of benevolent endeavors to expand its domain, it is quite clear, I think, to most scientists that science does not and cannot determine the judgment of values. Values

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depend on what (or which) we want. Science may aid us in getting what we want; it may clarify for us the actual alternatives between which we may choose; it may show us the "costs" of our choices; it may predict for us their consequences. All these contributions may aid us in making judgments which will actually lead to what we prefer; but they cannot decide for us what it is that we prefer. It follows that no application of scientific method can furnish the ethical code which a system of law expresses. All it can do is to expose the "expository" branch of jurisprudence, as Bentham called it, and thus incidentally to act as an aid and abettor of the "censorial" branch.[1] We will return later to the question of the way in which a science of law might be applied for this purpose when we have, to the best of our ability, disposed of the two major unnecessary obstacles to the creation of any science of law at all.

It is not difficult to account for the prevalence of the misunderstanding of scientific method which one finds among these legal laymen—for lawyers are very "lay" in this respect. In default of training and experience in scientific procedure in the fields in which such procedure has actually worked and is working, legal scholarship—or such part of it as is interested in promoting this movement—seems to have expected to find the recipes for its methodological tactics in the generalizations of the "philosophy of science". Now this recent postscript to philosophy in general is no more than an accesssory after the fact, attempting somewhat tardily to analyze how all this scientific progress has been accomplished and thus, by expanding or adapting epistemology to the post-Baconian development, to bring that particular branch of philosophy up to date. But this new philosophy has invented no tactics; it has applied no tactics; it is hardly even concerned with tactics. Its vital concern has been to prove that the putative grand strategy of science, conceived as a magnificent outflanking of the unknowable, is an imposture. Quite different

[1] As to the probable adequacy of such a seemingly partial development, the reader may consult the present writer's comments in *The Institution of Property* (New York and Toronto, 1936), pp. 22-23, n. 25 and 29.

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and apart from all this is what Jerome Frank calls "the spirit of the creative scientist". That spirit had and has little of such self-consciousness—it is more naïve, if you will. It is experimental, exploratory. It does not lay down in advance a scheme for the grand strategy. In fact few of the men on the firing line have ever given a thought to the matter of this grand strategy. They are too busy with tactics to concern themselves with strategy at all. They only know that their tactics "work"; and that is enough to justify them. But it is they alone who devise and apply tactics; and it is from them alone that tactics can be learned. I conceive that it is largely because they have looked to the wrong source for suggestions as to the way to begin their attack that many of the legal scholars who are inclined scientifically seem to have spent their time studying and discussing methodology—trying to decide how to start, instead of taking the first steps—or studying and discussing the underlying philosophy of a legal science—trying to start at the end instead of the beginning.

Another and even more disastrous effect of this somewhat malign philosophic influence has been to inculcate the idea among these would-be-beginners that the only "creative" and "true" science is a "science of generalizations", as opposed to mere "descriptive science". This antithesis is wholly invalid as well as invidious. Moreover, it has the baneful practical effect of causing those who hope to lay the foundations of a science in the field of law—or any other field—to be impatient of the "maze" which is the only entrance to any science—that anteroom where at first one seems to get nowhere. By seeming to promise a "royal road", which nevertheless does not exist, such an antithesis comes perilously near to closing the gate to the only road there is—a true descriptive science.

I suppose it would be quite generally agreed that the phrase "descriptive science" is intended to indicate the collection and examination of the data in any field for the purpose of naming, defining and classifying them—taxonomy. Now this is actually a succinct and accurate statement of the *one* method which all science follows and must follow in dealing with any

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subject matter. It is not to be supposed that plants had no names before Karl von Linné. Yet the enduring reputation of this founder of systematic botany (and zoölogy) rests on the fact that he was the first to give each species a single and specific name and to define the principles upon which natural history still classifies its subject matter. The scientific attack consists primarily in organizing the data. This organizing begins by identifying the identical or nearly identical individuals of a variety by means of discovering and describing their essential distinguishing features.[2] The resulting description, or as much of it as is needed in order to identify a variety and thus to differentiate it from all others, becomes the definition of the variety. Thereto is attached a specific name.[3] If the common name happens to be exactly specific, that will serve. If it does not, then—like it or not—a new name must be applied. In the *exact* sciences, so called, this process has been laboriously carried through so far as existing knowledge permits. The index in my copy of Villiger's work on the anatomy of the brain consists of nearly a thousand scientific names for parts of the brain and cord, and of nothing else. A textbook of organic chemistry consists very largely of many thousands of analyzing and classifying names of molecules (varieties of substances) together with their definitions. One of the chief reasons why the social sciences are not yet exact is that, in them, this process of identifying, defining and naming varieties has not been carried through.[4]

[2] Of course no two individuals are identical; yet we "identify" varieties.

[3] The name is, of course, purely a convention. I recall in college days asking a classmate what day of the week it was. He replied, "Thursday." I said: "Why isn't it Sunday? It could just as well have been, if they had started the week with this day or had arranged the names in a different order." That idea was to him preposterous. To him the name was an inseparable part of the thing named. This was what Jerome Frank would call "Wousinism".

[4] As to the naming, it is only fair to recall the fact that the phenomena of natural science do not "call themselves" anything first, while those of social science almost always do. This creates a real terminological difficulty for the latter. For instance, what the early Roman called a "*familia*" and what we call by the derived name "family" have, as a matter of fact, little in common; but social science continues to call both by the same name because they have both "called themselves" by that name.

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The determination of the relation of these varieties to each other, their classification or ordering, is the by-product of their identification. The double purpose is therefore better served if the adoption of a terminology for the varieties is made to fit the terminology for the classes into which they are organized. Thus the chemist names the active principle of oil of mustard by the long but analytical and classifying name, "allyl-iso-sulphocyanate". Knowing the name, he can draw the abstract diagram which has come to be used to represent the organization of the molecule and, by so naming it, he has related it automatically through his systematic classification to every other molecule which contains any one of the three radicals of which this one is composed. As a result of this previous analysis it even becomes possible for a synthetic chemist to know in advance what will be the behavior of a new molecule which he creates—a new combination of radicals which never was before on land or sea. On the other hand, classification in natural history has necessarily followed along other lines than the composition of varieties. It is, in botany, chiefly morphological—the "natural" system; it is, for the animal world, largely genealogical—a sort of evolutionary pedigree. The basis of classification must be suited to the character of the data; among the various possible criteria, that set must be chosen which seems most important; and this selection is a matter of judgment, so that classifications are modified or even replaced with the progress of knowledge. In nearly all cases the result is a hierarchy, a descending series of narrowing and somewhat parallel groupings gradually subdividing the whole mass of data; and in many cases the classes at each level shade into each other at their borders, just as red shades into yellow in the spectrum. Even the nicest definition leaves something arbitrary in the fixing of a dividing line.

In the foregoing illustration we have been looking at some of the scientific systems of classification as if they were *faits accomplis*. However, if we examine more deeply into the way in which these objectives are pursued, we will see that the technique of classifying, defining and naming—or organizing the material—is a process which embraces—or is the result

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of—the whole scientific procedure, and is one which is never finished. In this technique there are two methods of attack, analysis and synthesis.

Analysis is the process of breaking down the data into their constituent elements, which thereby become new data. The individual datum at one level becomes analyzed into a compound of unlike data at the next lower level. Thus the individual is found to be non-homogeneous. It is therefore no longer an individual. It becomes a crowd. Nevertheless, in the respect (at the level) in which it behaves as an entity, we continue, for convenience, to treat it as an individual. Thus we have, for different sciences—different behavior levels—a series of divisions of each whole into parts; and each part, at its level, is treated as a whole—as the individual datum, or, if there be several uniform parts, as the collective datum. To natural history, man; to ethnology, the race; to political science, the nation; to medicine, a man; to anatomy, the organ of a man; to cytology, the cell of an organ; to physiological chemistry, the protein of a cell; to chemistry, the atom of the protein molecule; to physics, the electron of this atom. All these are successively analyzed parts or constituents of natural history's man. Now when we look back we see that, in such analysis, science has been depositing a classification in each of this series of strata. As soon as we distinguish between the parts, individual or collective, we have classified them. To divide man into the races of man and the races of man, in turn, into nations is to choose some bases of distinction, some criteria for these classifications. It is to divide something that was at first treated as if it were homogeneous into parts which are thereby treated as heterogeneous. It is to choose at each level a respect in which there is homogeneity as the criterion of a whole (an entity) and a respect in which there is heterogeneity as the criterion of parts—the entities of the next lower level. Therefore, analysis is also classification—the breaking down of the whole into classes or parts. And the basis of analysis is the choice of a criterion according to which we distinguish these classes.[5]

[5] It should be noted that, in most fields of analysis, these criteria are more

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We say we classify by putting likes together in a group and separating unlikes into separate groups. This man has done naïvely from the beginning. One of the difficulties in the road of science is the inclination to continue to do it more or less naïvely. Thus, today, ethnology suffers from having based its classifications on distinctions (brachy- and dolichocephalic indices) that turn out not to be accurate differentiations. One school of psychology ran off the track when it endeavored to distinguish two classes of men according to two contrasting tendencies, introversion and extraversion, in both of which all shared and even in different degrees at different times. One may suspect that this naïveté is a feature of traditional legal classifications; and this may explain some of the present dissatisfaction with them.

If, then, analysis includes both putting likes together and separating unlikes—that is, classification—what is synthesis? If the dividing of unlikes has as its necessary obverse the grouping of likes, why use two terms for what are merely the two aspects of a single process? Evidently that is not the distinction which the names analysis and synthesis are intended to convey. We have said that analysis is the breaking down of data. By that we suggest that analysis is a matter of direction. It is starting with wholes and breaking them down into parts which are heterogeneous in some respect among themselves and homogeneous in that respect within themselves. It is classification of the broader into the nar-

precise if stated in terms of the systems of relationship which exist between each particular entity and other entities at its own level, than if they are stated in terms of the constitution of the entity itself. And this because the constitution at any level includes that of all lower levels. In that respect no whole can be different from its parts. Nor can it be defined except in terms of its parts. On the other hand, the system of external relationships differs at each level and is therefore more definitive. By "systems of external relationship" should be understood more particularly functional relations (behavior) but also static arrangement in a pattern of external *relata* and *comparative* morphology. The criterion for distinguishing the heart from the liver may include all counts; that for distinguishing arms from legs must be chiefly functional, hardly at all morphological and not at all topological. On the other hand, the criterion for distinguishing islands from peninsulas is wholly topological; and that for distinguishing cones from spheres is wholly morphological.

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rower. In the hierarchy of classifications it works from the higher to the lower. So examined, synthesis turns out to be merely classification in the opposite direction—from the narrower to the broader, from the hierarchically lower to the higher, the combining of hitherto isolated parts into new wholes.[6] If analysis is dividing one into one third and two thirds, which are unlikes, synthesis is "putting two and two [likes] together". Now, curiously enough, it is much easier and pleasanter for the human mind to find likenesses than it is to find unlikenesses.[7] Synthesis is much more interesting than analysis. The seeing of some hitherto unnoticed resemblance that serves as the basis for a new grouping into a more nearly all-embracing class is the kind of scientific insight which excites the seer and occasionally rocks the world. Darwin's theory of evolution consisted essentially in climbing up the hierarchy of varieties, species, genera, etc., with a new criterion which united into one system the hitherto mutually independent aborigines of "creation". The detection of the likeness between voluntary and involuntary behavior was the grand synthesis of Freud. On the other hand, it is the hasty or the premeditated synthesis which is the prejudicial synthesis for science. Those interested in the application of scientific method to law would do well to review the early history of natural sciences to see how much that was false and hindering in the way of synthesis had to be sloughed off before they

[6] Again, we may remind the reader, the criteria for synthesis—the "resemblance" referred to below—include systems of external relationship. Thus the "law" of gravity is stated in terms of a functional relation between *any* two bodies, a topological relation to each other (square of the distance) but no longer that to space from a particular viewpoint (falling) and a comparative morphological relation (mass). But the criterion of synthesis, in contrast to that of analysis, is as frequently and as precisely in terms of constitution. And this because the deeper the level to which analysis reaches the more generalized is the constitution, and the greater the probability of hitherto unrecognized uniformities. When the physicist discovers that the suns and planets are made of the same "stuff" as the earth, and, glancing "from earth to heaven", he "bodies forth the forms of things unknown" "and gives to airy nothing a local habitation and a name", the synthesis is in terms of constitution.

[7] For instance, to the unaccustomed eye all Chinamen look alike; the delight of the novice is to find the patterns in which "history repeats itself".

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really got their starts and became fruitful. Almost it may be said that the unexpected synthesis is the only one of permanent value. Such syntheses arise, it is true, from the discovery of hitherto undiscovered likenesses, but their basis and opportunity are almost always the result of prior analysis which, through its long laboring with details, has disclosed a constituent, or a part, of one whole that turns out to be homogeneous with a constituent, or a part, of another whole.

This general survey of scientific method, or, as I would prefer to call it, the organization of knowledge that science strives for,[8] seems to me to demonstrate quite clearly that a "science of generalization" consists exclusively of the classifications which descriptive science has built up. All general statements (generalizations) are classifications, and nothing more than that. However, if they are exact statements of fact —and therefore scientific—there can be nothing arbitrary about them. Then they are not "mere" classifications—mere taxonomy. For they must be preceded by scientific determination that, in every instance included in the generalization, the constitution, the system of relations or the behavior is in the stated respect uniform. And "there's the rub".

Therefore, even if it is unconventional, it is correct and helpful to regard the whole of scientific method as a way of organizing the data and as a single process which may be pursued in either of two opposite directions—analysis or synthesis. In either direction it consists of, and is based upon, classification—the identification, definition and naming of each individual (or entity) at each level and thereby the differentiation of the different individuals (or entities) at that level. Everyone familiar with the exact sciences recognizes that the intensive labor of many workers for many years has gone into this organization of their material. Those who are accustomed to deal with their subject matter by the usual technique of the social sciences—the so-called armchair—instead of that of the natural sciences—the laboratory and field work—do not

[8] Method is, more strictly, the various means of arriving at exact knowledge of the constituent facts. However, I have been using the term, throughout, in its broader and more usual sense.

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seem to relish the arduous work of such analysis and synthesis. But upon this organizing ultimately rests, in all cases, the remarkable progress that man has made in dealing with external nature. There is no "royal road" to generalization. If there is to be a science of law it must begin at the beginning. Later in this paper I shall attempt a few illustrations of what this means and a few suggestions as to how it may be done.[9]

The other self-imposed barrier to scientific progress in the law is the intellectual habit, to which the legally trained seem to be inured, of regarding the material of the law as a system of *concepts*.[10] If the subject matter of law were in fact a system of concepts it might well be intractable to, or even beyond the reach of, scientific method. Practitioners of the natural or physical sciences do not seem to regard their material in this way. The natural scientist is neither a philosophic realist nor a conceptualist; he is pure nominalist.[11] To

[9] If anyone believes that the law is a discipline which can escape the necessity of exact definition and of classification, let him read J. C. Bonbright's recent treatise, *The Valuation of Property* (New York and London, 1932), which approaches the subject in a thoroughly scientific way. He will "remain to pray".

[10] One result has been that the subject matter of analytical jurisprudence, which is the nearest approach the law has hitherto made to a system of classification, seems to be conceived by many to consist of mere metaphysical notions, any analysis of which is purely an intellectual game. Felix Cohen (35 *Col. L. Rev.*, p. 821) calls it a "special branch of the science of transcendental nonsense." Thus the name of that branch of the study of law which occupies the position "pure theory" would occupy in a science has come to be used as a term of opprobrium by legal practitioners and, at the moment, by many legal scholars.

[11] As these terms have been used in many connections and given many interpretations it may be well for me to indicate what I mean by them in this connection. (1) Realism is the view that generalities have external existence and that individual instances are merely exemplifications of them; (2) conceptualism is the view that generalities exist only in the mind, but that there they are abstracted from the concrete data or individual instances, which, in that sense, are again mere exemplifications; (3) nominalism is the view that, both externally and in the mind, generalities have no independent existence, but are merely names for convenient groupings of individual instances — though the usual representation of such groupings in the mind may be by means of, not the whole collectivity of observed instances, but a single concrete instance as type for all (Weber's "ideal type"). It is true that the most inferential entity of science assumes the form of a "conceptual model"—that is, an im-

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him the entity which he labels with a name has no other existence than that of the individuals he includes thereunder. The name merely designates a grouping of more or less particular individuals and indicates the precise criteria according to which this grouping has been made. Such a view of the entities considered in the natural sciences seems to us, at first sight, to be quite proper for the simple reason that these entities concern physical objects which are visible and tangible. Yet that is not entirely correct. The atom, as an example of such an entity, is neither visible nor tangible. True, it can be weighed, and it can also be analyzed into constituent parts still more primary or elemental. But its physical existence is merely inferential, as was that of the planet Neptune after it had been inferred and before it was observed.[12] It becomes necessary, therefore, on second thought, to modify our "simple reason" into this: that the data of natural science can be detected by the senses or can be inferred from sensible evidence. Can the data of law be brought within a class determined by this criterion? If such a thing were to be possible at all, it is at once clear that the avenue of approach to these data must be sought in a different direction from that in which the legalistic minded have been looking. The only possible way in which the legal material might be made subject to scientific method would be to regard it and to treat it as a part of the subject

puted perceptual image—or that of an "operational concept"—that is, a concrete experience. But the name concept is misused in both cases, for in neither has there been an "abstraction", which may be defined as the "process of stripping an idea of its concrete accompaniments." Both are completely concrete, though the former is pure analogy. This is far more than a dispute about words. It goes to the root of scientific method. Of it more anon.

[12] Bertrand Russell, one of the above-mentioned "accessories after the fact", takes the position (e. g., *Mysticism and Logic and Other Essays* [New York, 1918], p. 155) that "logical constructions are to be substituted for inferred entities." I should say, rather, that inferred entities are to be regarded as such, and should take the form either of conceptual models or of operational concepts, whichever is more convenient. In the case of Neptune the analogy was so close that the model of a planet would naturally be used (with reserve); in the case of an electron the analogy to a particle is so doubtful that an operational concept is to be preferred. Again, we use the "benzene ring" as the model of a hydrocarbon molecule. But that is frankly a diagram and does not pretend to be realistic.

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matter of social science. So treated, legal data would, at least, cease to be a system of concepts. But that does not settle the matter. Even then there remains the question whether, in view of the current methods and somewhat doubtful results of social science, such treatment would bring legal data within the definition which we have found adequate as a criterion for the data of the natural sciences. So treated, the law would be only indirectly an affair of physical objects, men and their natural environment, which are visible and tangible. Directly, its data or material would, at best, have to be regarded as portions of human behavior, the acts of these men and the consequent relations which exist between them; and it would be these acts and relations which would require to be identified, named, defined and classified. Obviously that is a very different business from naming and classifying the birds and flowers. But is it so different that it excludes the material itself from the application of scientific method? [13]

In its bearing upon the general question of the extension of the field of science from natural into social phenomena we find most appropriate the character of the data in a particular branch of science which is not educed as often as it should be as a methodological example for the others. Geology is an almost purely historical or evolutionary science. It is the physical history of the earth. During its remarkable progress it has succeeded in building a system of adequate hypotheses to explain how things have come to be as they are; and, in doing so, geology has made it possible for men to recognize certain very slow processes which have always been going on

[13] In another connection Robert M. MacIver ("The Historical Pattern of Social Change", 2 *Jour. Soc. Phil.*, p. 36) has pointed out that, if we define an entity in the social field to be "an area of human society" "which in each of its moments is a unity and in all its sequences persists through change"—and this seems to be the best definition possible—we are still confronted with the difficulty of defining "a unity". If we choose the obvious one — the *relatum*, man—we become natural historians. What we are concerned with, as social scientists, is not the *relata* (men) but the innumerable systems of relations that exist and persist between these *relata*. To define a "unity" among these is difficult. Nevertheless it is not impossible at the simpler level we are concerned with, even if it becomes so at the level of "historical movements".

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before their eyes, but which they could not even perceive until they had gained this long historical perspective. Geology is concerned with these processes and with their results rather than with the physical substances through which they become apparent to the senses. The physical substances are the lay figures or points of reference of geology, just as man and his environment are in the social sciences. Geology studies the static and dynamic relations between these substances—their structural organization and their functional behavior—just as the social sciences study the structural organization of society and the functional behavior of men in these organizations. It may be objected that this is no more than analogy. For, in the first case, the acts and relations are spatial and physical, while, in the second, they are often not. But is that distinction valid? Are not both kinds of relation alike in that they are potential, and both kinds of acts alike in that they are actual, behavior—arrangements and rearrangements—*external to the observer?* Are they not both alike phenomena of which the only subjective feature is the representation in the mind of the observer, to which they are conveyed in the first place by forms of perception which we call observation—as percepts, not as concepts? This suggests that the broader criterion which distinguishes material subject to scientific method from that which is not is that the data so subject are originally perceived, not conceived; though the perception itself may be formed into a pattern or *Gestalt.*

If the law deals with certain aspects of the structure and functioning—the organization and behavior—of human societies, its data, since these consist of the coincident static and dynamic relations between the *relata* (men), are necessarily external to the mind of the observer.[14] The immediate repre-

[14] W. W. Cook seems to me more explicit and unreserved on this point than are some of the other advocates of science in law; see 13 *Am. Bar A. J.*, p. 308. He says "a scientific approach to the study of law will demand observation and study of the actual structure and functioning of modern social, economic and political life. . . ." Cassius J. Keyser (38 *Yale L. J.*, p. 416) agrees that "the subject-matter of legal science is a certain species of human behavior", but then he seems to limit that species to "the decisions of the judges."

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sentations of these data in the mind would be, for that reason, what we call percepts, not concepts. Only the secondary or derived representations could properly be regarded as concepts. Even then they can be more accurately regarded as a kind of reorganization of the original perceptual pattern or *Gestalt*. To treat such derived representations as if they were abstract concepts is merely to forget their origin, to detach the ultimate picture from the reality out of which it grew. Is that not precisely what has occurred in legal thinking? Has not the law come to think of itself as dealing with thoughts, whereas in reality it deals with acts and relations? Surely the term which is used to designate a legal entity—a piece or kind of legal material—is not merely a disembodied word; it is a name. Nor is it a merely abstract term. It does not name merely a concept—a verbal or ideal construct which we credit with no existence except in the mind. It is, on the contrary, a name for a set of what, in science, we call facts—things of the existence of which we learn, not by thinking, but by watching—which come into the mind first as percepts. If such a term were only a word, or if it represented merely a concept, its content or significance would be liable to the subjective and autonomous changes that are suggested in Mr. Justice Holmes's classic dictum in which he described a word as "the skin of a living thought".[15] True, the content of anything which is named does change, just as the content of that which was named Mr. Justice Holmes changed continually from birth to death. So the term for a legal entity may be applied to a datum which is now somewhat different from what it used to be. But, nevertheless, we find it possible and convenient to identify each entity by a single name throughout its changes, unless the alteration exceeds certain bounds—its criterion.

[15] It seems unfair to quote the man whom Mortimer Adler says (31 *Col. L. Rev.*, p. 107) has been placed "upon a pedestal", as "the patron saint of realism", by way of an awful example of verbalism or conceptualism. Nevertheless it is less invidious to select as an example a vestige of the old way of thinking left in the mind of a new thinker; and this example is more appropriate for my point since it at least concedes that there is something "living" behind the word. Moreover even the "realists" in general have not cured themselves of this view of the "existential reality" of concepts.

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Again, we must recognize in the former case, as in the latter, that these changes are external to the mind of the observer. True, people's views of Mr. Justice Holmes—their derived representations of him—may have changed during his lifetime; so, too, people's views of any legal entity—their derived representations—may change. One may analyze a legal entity somewhat differently today than yesterday. But we find it convenient to distinguish between these two kinds of change —alterations in the datum itself and alterations in the secondary mental representation of the datum—even though we recognize that they may have a reciprocal influence on one another. After viewing the painting of a familiar landscape by a great painter we may *see* the landscape itself differently; but we do not assume for that reason that it has changed in the meantime. So, too, we find it convenient to differentiate between two different secondary representations arising from one indifferent percept. Hydrochloric acid, it will be agreed, is the chemical name for a sensible fact. To the laity, who incidentally usually use the common name "muriatic acid", it is a substance which they know by experience, through their senses. The laity have a concept, then, which is derived from their percepts of hydrochloric acid. To them it is an acrid-smelling, burning, heavy liquid. The chemist has another concept of it, as well; he thinks of it as—even calls it—HCl. These two concepts are two different mental representations of the same datum. The first is purely sensuous, direct, almost pure percept; the second is analytical, indirect, but still derived from percepts. It may be objected that all this is beside the point, that legal data are admittedly perceptual, but that legal concepts, so called, are generalized attributes of these data, not the data themselves, and that, as such, they are wholly conceptual. But such a view is psychologically untenable. Our only actual percepts are just these individual attributes of our data. We see an apple as red and round. Redness and roundness *are* the percepts. The entity, the apple, is only the compound pattern or *Gestalt* in which these individual percepts are spatially and temporally organized by the perceiving ap-

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paratus of the mind; the apple itself is only the imputed source of the actual percepts.

It follows from this analysis that, if scientific method is to be successfully applied to law, the first step necessary will be to restore and systematize the relationship between legal entities—the so-called legal concepts—and the data from which as percepts they were originally derived. The data which were the source of each entity can best be recognized by retracing the process of conceptualization back to the naïve or immediately perceptive popular system. The common language has established its own classifications for the various kinds of acts and relations with which the law deals, and has given them names, though frequently these names are not specific; one name may cover not only the act but also its consequences, the system of continuing relations which the act establishes. Purely by way of illustration, since anything definitive is here out of the question, it may elucidate this point and shed some light on the true nature of legal entities and the requirements of legal classification if we attempt to relate some legal "concepts", so called, and their names, to this popular system. Let us select a few representative examples. Two or more men perform an act and thereby establish a relation, each of which is in common parlance called an "agreement". Then the law steps in and defines a sub-class of agreements. It says, "under certain circumstances this agreement will be classified as a contract." In Roman terminology, the class of "bare pacts" is thus divided into contracts and non-contracts by the attachment of certain legal consequences (obligation) to the former. Or, again, two or more men act regularly together in some respect. Common language calls this an "association". The law defines a sub-class. It says "under certain circumstances, this association will be classified as a corporation." What the law says, in either case, does not change the nature of the datum from an external and observable fact to a legal concept or abstraction. All the law has done, if it has been rational, is to set up some observable distinction in the circumstances, according to which it defines the sub-class of the phenomenon agreement or the phenomenon association,

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and thus to differentiate each and to give each a name. The fact that the law attaches special consequences or sanctions to its sub-classes does not alter the data; it does not warrant the purely legalistic view that contracts or corporations are the "creations" of the law. Only the legal consequences or sanctions are "created" (attached) by the law.

Take as another and more complex example of legal entity that class of acts which the common language calls "wrongs". Here that other element enters which, as we noted at the beginning, is not directly subject to scientific method. That is the element called "value judgment"—in this case the separation of "bad" from "good", to put it in its crudest terms.[16] A wrong is presumptively a "bad" act. The law defines a sub-class of wrongs which it calls "crimes", and subdivides these again into felonies and misdemeanors. But the entry of value judgment introduces a difficulty. If the particular set of facts—the act—which is involved in a case is held not to be a crime, is that because it does not fit into the classification "crime", according to the legal definition; or is it because the judge's (or, be it said, the jury's) direct value judgment upon the particular set of facts refuses to call the particular act "bad" in that case? If the act is excluded both

[16] It appears to me that the ultimate concern of many of the most ardent advocates of the application of scientific method to the law is with this element of value judgment. They have chosen Bentham's "censorial" branch of jurisprudence. And this presents a curious anomaly, because it is just this branch which we conceded at the beginning is not directly approachable by scientific method. But perhaps we must distinguish sharply between so-called "functionalism" and the scientific spirit. Perhaps we must agree with Jerome Frank (17 *Corn. L. Q.*, p. 586) who describes the "functionalists" as "unflagging idealists disgruntled with the way the courts do their work; they are tireless critics of the existing ways." Felix Cohen (*loc. cit.*, p. 829) defines the functional approach as the effort to discover "the *significance* of the fact through a determination of its implications or consequences in a given . . . social context", and admits (p. 849) that such an approach is impossible without a "critical theory of values." One wonders if it is not a *new*, rather than merely *a*, theory of values which it is sought to apply. To devise and procure the acceptance of a new "critical theory of values" is like introducing a new religion. It may be very necessary; but it is not science, though a science may be of value as its foundation. As Karl N. Llewellyn has said, "It is only in terms of a sound descriptive science of law . . . that ideals move beyond the stage of dreams" (30 *Col. L. Rev.*, pp. 463-464).

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from the classification "crime" and from the classification "bad", the law is clear; but, if the set of facts fits the definition of "crime" and the particular judgment on the case excepts it from the classification "bad", then the definition of "crime" must presumptively be wrong. For the chief purpose of the definition is to enable accurate prediction—to forecast what the value judgment will be. This purpose requires that the criterion of classification include, among its means of identification, the legal consequences which will result from any set of facts so identified. The combination of these two requirements in the criterion for the classification of one set of facts—a uniformly applicable definition and a uniform legal consequence—introduces further complexities. If the value judgments are uniform and so result inevitably in one set of consequences, the classification of the facts according to legal consequences will be perfect; and yet it may be purely empirical. Only if the key to the uniformity of the value judgment can be given, so that the definition of the class includes it, is the criterion truly analytical.[17] In this connection another point is worth making, though it is hardly applicable to the particular example of a legal entity that we are using. When the law habitually and deliberately misclassifies a set of facts in order, because of the similarity of its judgments on them, to attach thereto, without analyzing its reasons, certain legal consequences which are regularly accorded to the class in which it is misplaced, we have what is called a legal fiction. That is a trick based on the perception that it is easier to expand old classes (synthesize) than to add new ones (analyze).[18] But the result is to destroy the validity of the definition of class because there is arbitrarily included thereunder, albeit as a sub-class, an entity which is not in other respects a part of the same whole. We have, for instance, quasi-contracts and implied contracts, which are not agree-

[17] Llewellyn calls this "explicit-making" (*loc. cit.*, p. 436, n. 4). On this double criterion see John Dickinson, 79 *U. of Pa. L. Rev.*, pp. 856 *et seq.*

[18] As Llewellyn leniently puts it, in a somewhat different connection, "The job cannot be done unless the new can be made most of the time to pass as being old." *Essays on Research in the Social Sciences* (Washington, Brookings Institution, 1931), p. 104.

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ments at all.[19] Nevertheless, even these additional complexities and confusions do not convert the legal entity into an abstraction instead of a class of data. They merely convert the criterion for classification from a simple one, defining a kind of situation from which the legal consequences flow with perfect regularity, to a compound one into which, if the criterion is not analytically perfect, the more uncertain element of a specific value judgment on the case may be introduced as a sometimes open drawbridge between the set of facts and the legal consequences.[20]

An example is also required to represent a legal entity of the most seemingly abstract type. Obviously the name of the legal entity, "a right", like that of the popular entity, "a wrong", is a derivative of the foregoing process of value judgment, the distinction between right and wrong. This suggests that the noun was derived from the adjective; and so it was. It also suggests that, at first, there must have been another noun which this adjective modified and which it only later replaced. If so, it is the original noun which stood for and still stands for the datum. It is as if a "red apple" came to be known merely as a "red", with the result that scholars lost sight of the apple and came to see "red" as the entity instead of merely one of its attributes. What was and is the entity, "a right"? Let us take, as a simple example, "right of way". In Roman law the major part of this was originally known as *iter,* "a going", the name of a common act; in more sophisticated times that became *ius eundi,* an "authorized

[19] In that kind of classification, the duck-billed platypus is a bird because it has a similar front end. In natural history it is called a paradox, but not a fiction.

[20] It seems to me that some such discrimination enters into Roscoe Pound's separation of "human conduct" from "business transactions" and his belief that a high degree of certainty is possible and necessary only for the latter. In the latter, value judgment is (or was) less often a factor. See *Introduction to the Philosophy of Law* (New Haven, 1922), pp. 139-143, and *Interpretations of Legal History* (Cambridge, Mass., 1923), pp. 153-155. Perhaps some are interested in obliterating this distinction principally because they are convinced that "economic transactions" are also always good or bad from the social standpoint.

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authority of going";[21] the bridge between these two stages would have been, in English terminology, a "right going"; and the three steps, in English, would have been a "going", a "right going", a "right of going". In all cases of antecedent, or substantive, rights the datum itself will be found to be such an act or relation which existed before, or exists outside of, the law, and which is some observable feature of the structure or functioning of human societies. Calling it "a right" is merely an ellipsis and does not convert the name of the act into an abstraction. It only expresses the fact that it is among the authorized and approved, or "right", acts and relations.[22] The remedial, procedural and adjectival rights are correspondingly classes of acts at law (*actio*)—the legal consequences which are potentially attached to these "infra-jural"[23] acts and relations (antecedent rights) when they are "right" or as a means of determining whether or not they are "right". Nor is there anything more abstract about these secondary acts, even though they would have no existence independent of law. In fact, as Maine says, "Substantive law has at first the look of being gradually secreted in the interstices of procedure."[24] It was these concrete secondary acts which were first visible within the restricted hori-

[21] This unconventional translation of *ius* is in accordance with my analysis of the Roman usage. See *The Institution of Property*, pp. 149 *et seq.*, 165-167, 188-191.

[22] There is nothing "*sub rosa*" about it, as Llewellyn seems to think (30 *Col. L. Rev.*, p. 440). While it is ultimately based on a value judgment which declares the act "right", it is true, nevertheless, that, at the level of the decision itself, the proximate determination is one of "lawfulness" only. On this see Max Radin, 51 *Harv. L. Rev.*, p. 1145. The above statement is merely summary. For exact and detailed analysis of a right we need Hohfeld, as well as Radin's valuable further exploration of Hohfeld's diggings; see particularly Radin, *loc. cit.*, pp. 1163-1164. For a general review and criticism of the present state of the analysis of a right, see Pound, 50 *Harv. L. Rev.*, pp. 571-576.

[23] To borrow Albert Kocourek's terminology; see his *Jural Relations* (Indianapolis, 1927). Llewellyn (30 *Col. L. Rev.*, p. 440) calls them "*non-legal* rights". But it is the law which declares them "right", and therefore "rights", though the act is not "at law".

[24] *Dissertations on Early Law and Custom*, p. 389.

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zon of law, and it was they which came to shed the radiance of abstract rightness upon the concrete primary acts.[25]

This brief analysis of some legal "concepts", so called, in terms of sensible data may also shed some light on that confusion worse confounded, the present arena of battle over the nature and significance of legal rules or principles. In terms of our analysis the legal rule is not one of the legal entities at all. It is, instead, a statement of the criterion by which the law classifies its entities. For instance, a will may be required to bear two signatures; if it does not, it is excluded from the legal class "will". This particular rule is the application of a single criterion only; it is a question of fact rather than of value judgment, and the failure of the expected legal consequences results automatically. The question "When is a will not a will?" is easily answered. Where the aforementioned double criterion enters, the rule shows more clearly its double aspect, the combination of identification and of value judgment; and that, in turn, introduces the discrepancy between what the law says and what it does, and thereby the uncertainty as to what the law is. An analogy may again be useful here. Botany has analyzed the mushrooms into varieties, and has synthesized these many varieties again into a single class of poisonous and a single class of non-poisonous varieties. Now, if we set a thousand botanists to work identifying specimens, they may or may not agree. Some may be ignorant as to what distinguishing characteristics should be chosen as criteria, or uncertain as to whether the specimens are harmful or not; or they may be unobservant, or merely stupid; there may be honest differences of judgment; some of the specimens may be new varieties or "sports" of the old (and this is the usual condition of legal cases which serve as specimens in law schools). Which is *the* system of criteria, what the textbooks "say" or what the botanists "do"? The only sensible answer seems to be that, at this late stage, what the textbooks "say" usually represents a *consensus* of informed judgment and thereby expresses *acceptance* of a system of

[25] And the antecedent right then came, through the work of what T. R. Powell calls "the postmortemizer", to seem at law like a little lump of this abstract rightness because the original noun eluded the legalistic thinker.

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criteria, or definitions, developed out of what botanists have "done" in the past. Therefore what the botanists "do" now is usually identical with what the textbooks "say". Individual botanists who diverge from that standard system are presumptively in error. On the other hand, where there is not *consensus* and *acceptance* there is as yet no settled criterion, no rule; and a good textbook will state that fact. This analogy may strike the reader as unfair. The classification of mushrooms is a relatively simple matter; the determination of the poisonous effect of, say, the amanita by observation is positive; the value judgment of poison is sure. Like sin, we are unanimously "agin it". Nevertheless the factors entering into classification and judgment are of the same kind, though different in degree, in the case of law.

Legal rules constitute the criteria of the judicial process of classification; they represent, as well as may be, the *consensus* and *acceptance,* accumulated over the centuries and still accumulating, with regard to definitions of varieties of sets of facts, including the legal consequences which are attached to them and, if that question enters, judgments as to whether or not they are "wrong".[26] The system of rules we have may be vague and loose; it may be out of date; it may consist of rules of thumb instead of scientific formulations, with the result that identification is largely a matter of guesswork, value judgments are permitted to be hit or miss, and conformity to rule is largely verbal. Nevertheless it is all that the law has by way of a system of criteria for its classifications. Abandonment, as advocated by some, would lead only to greater chaos. It is a Hobson's choice. The application of scientific method seems surely indicated. Even then, the law will never make progress toward a truly analytical system by accepting as its ultimate data the current decisions of all—or nearly all—judges; for, in the absence of such a system, these cannot be consistent even if they aim to be, and therefore tend, with whatever lip service may be rendered to the present inadequate

[26] Not mere "generalizations" of the "past behavior of judges", as Cook calls them (*loc. cit.*, p. 308). The developing system of classifying as well as the explaining of this system by botanists, as it gradually generalizes itself by consensus and acceptance, becomes the *selected* behavior of certain botanists and thus *the* system.

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criteria, to degenerate into mere unrelated expressions of individual opinions upon individual instances. Only when the entire profession takes as its ultimate data the cases themselves —the sets of facts—and analyzes and classifies them thoroughly, will it be moving toward a rational attachment of legal consequences and, thereby, toward a system of criteria, exact, specific and all-embracing, which can gain consensus and acceptance and thus become pragmatically, if tentatively, true. Only in this way can the essential distinction between right and wrong decisions be maintained and sharpened; only in this way can "the law" be more than a *law of probability*.

To an outsider, it would seem that the law, in regarding its entities as mental concepts, has been standing in its own light. It has come to look upon itself as dealing with its own thoughts, ideas, words; actually it has always dealt with human acts and relations. The legalistic view permits the illusion that legal entities are created by law and lawyers, while that is true, at most, only of their legal consequences. It classes these entities with such nearly pure concepts as justice instead of with such derived concepts as man. It confuses value judgments with analyzed percepts. It thus places its entities beyond the reach of the kind of analysis and synthesis, through observation and inference, which can be so fruitfully applied to material we call factual. If the law overcomes this preconception as to the nature of its material and, instead, comes to recognize its data to be acts and relations of men in society, of which some are autonomous or external to the law —"the facts", so called—while others are imposed or internal —the legal consequences, or "the law", so called—then its entities will convert themselves into percepts, and names, definitions and classifications of the same, all of which are of the order of the material and its organization in every other field of science. And its rules will convert themselves into statements—in terms of both "the facts" and "the law"— of the criteria by which these entities are classified.

Even then the task will turn out to be a double one. For it is necessary not only to adopt this different viewpoint as to the nature of the material, but also to reorganize this material by the above-described process of scientific analysis and

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synthesis. Even if it were treated as a classification of real data and not one of mere concepts, the present organization of legal material would not be satisfactory for scientific purposes. The present nomenclature, the definitions and the classifications of law are the accumulated inheritance of tradition. In a sense they are like the above-mentioned classification in zoölogy—an evolutionary pedigree. That basis has its value as record and explanation. It shows the manner in which the varieties were differentiated in their early stages, as well as the source and connotation of each. But whereas the sets of facts in law have continued to evolve, just as have the varieties in animal life, the system of classification in law resembles what a zoölogical classification would have been in the eocene; or rather it resembles what such a one would now be if no changes in animal life were recognized which had occurred since the eocene. Legal terminology consists, for the most part, of the names of legal fossils. Legal classifications and definitions no longer adequately analyze the present-day facts; and frequently they do not explain the criteria for current value judgments. This seems to be the just ground for the complaint of the so-called "conceptual nihilists" and for the current impatience with analytical jurisprudence; this seems to be, at its root, the reason for applying scientific method to the study of law.

If we examine, for instance, the existing system for the analysis and classification of property, we perceive at once not only that it is archaic and out of date but that the arrangements of the present day cannot be fitted into it at all. Even when property comes to be treated for what it is—not a system of concepts, but one of the systems of organization, or systems of relationships, existing in society [27]—it will still be necessary to submit it to a wholly new analysis. The resulting classifications may be multiple (for different purposes) each with its own set of criteria. Property may be viewed from the standpoint of inherence and classed as public or private, as now. But, if it is examined from the standpoint of incidence, it can no longer be classed as real or personal. Something along the line of "property in land" and "property in

[27] *Cf.* the author's *The Institution of Property*, pp. 415-426.

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goods" must be substituted. And, from the standpoint of the composition of these bipolar relations, it will become obvious that a chemical type of analysis, in which interests[28] occupy the place of molecules and their component rights that of atoms, must replace the present disorganization.

In the course of such a fresh and observational attack it is quite possible that a science of law may have occasion, like other sciences, to go beyond the area of directly observable acts and relations and to impute the existence of certain entities which can only be inferred. It is curious, for instance, that the concept of legal personality, which is a relic of legal animism or anthropomorphism, should have been carried over from the natural person to the corporation in the shape of the *persona ficta*. For, in regard to property at least, this does not at all explain the way the law behaves. Instead, it is the impersonal corporation which shows in its clearest form the behavior through which one may detect the true inherence of property. It is there discovered to be in some sort of nucleus, which I have elsewhere called a "fund", and which is neither the persons nor the property (interests, rights) itself. When once this nucleus is inferred it is found also to be evident in the case of all less collective holdings as well, even including the individual holder; and, in turn, when this becomes apparent, then, so far as property law is concerned, the other aspect of what has been called legal personality converts itself into a system of offices, independent both of person and fund, which are occupied by persons in connection with funds. No one has ever seen a "fund" or an "office". But, since both are derived from external observation of the behavior of the law (the courts, etc.), they are conceptual models or diagrams, like the graphic formulae of molecules, which conveniently organize and systematize a large number of discrete percepts into hypothetical but very pragmatic entities.

The fruits of the scientific attitude and method applied to the law will be greatly increased once the present misapprehension as to the nature of the material with which law deals is corrected, and once the lack of interest in the method of

[28] Using the term in its technical sense. In that sense it is defined in the *Restatement of the Law of Property*, Sec. 5, as "varying aggregates of rights, privileges, powers and immunities".

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"descriptive science", identifying, naming, defining and classifying on a truly analytic basis, is overcome. From this will result a great clarification of "expository" jurisprudence. But it will not do to make light of the real obstacles remaining. In the first place there is the inherent difficulty, facing bench, bar and student, of determining what actually are or were the "facts" of the case which is being argued or studied. The "facts" are usually disputed; and their determination must, in the interests of justice, be subject to the rules of evidence and, in the interests of order, be expeditious and final. Neither of these limitations on the technique of observation is conducive to scientific exactitude. But at least such analysis will help to clarify the "law" of the case. And difficulties in determining the facts face all scientific procedure. The other real obstacle has already been touched upon. Scientific method can only help, in the ways already indicated, to determine what value judgments should be made. But its great value in this regard is not so much to be an aid in determining what value judgments *should* be as it is to be a sure prediction what they *will* be. The chief function of this method is the uncovering of the keys to the preponderant value judgments that are being currently made, and that have been made in the past, so as to permit the inclusion of the keys to these judgments in the criteria of legal classifications and thus to lead in the direction of certainty. The essential for complete certainty—that ideal for law—is that each legal classification of sets of facts should be so exactly defined that those who are informed can determine the place in the system in which every specimen they meet in experience belongs, once they have fully ascertained its essential characteristics, and that each set of facts should have a single, sure and definite set of legal consequences. Though complete attainment of this ideal is obviously quite impossible, nevertheless, by the application of scientific method, the law may at least arrive at as much certainty as is possible with any body of living and evolving subject matter, and the battle between the contending ethics may be brought into the open, where it belongs.

NEW YORK CITY C. REINOLD NOYES

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ENTANGLEMENT OR NON-ENTANGLEMENT: IS THERE A CHOICE?

IN the contemporary debate on America's place in world politics, whether the issue under debate be stated on the one side as isolation, non-entanglement, continentalism or hemisphere integrity, or on the other side in any of the variants of the word coöperation, one question has been conspicuously ignored or elided. Is there anything to debate? In other words, has America still any option? Or has not America's place been fixed—fixed without regard to its desires or convictions and by circumstances that lie in the social environment and are therefore beyond its control? Let me make clear at once that when I say this I am not lumping together all the variations on the theme of coöperation to form an abstract imperative. If there is an imperative it is not exercised by what has been called somewhat prematurely the interdependent world. Nor does it derive from any political necessity or moral obligation to adhere to any system of collective security or to commit the nation's power to fight for right against wrong in any conflict anywhere arising. It has not been demonstrated that any such political necessity or moral obligation exists or that either can be fulfilled. In short, I am not reopening the frayed post-1918 controversy between the isolationist school, so called, and the internationalist school, so called. If there is an imperative it derives force from something that lies deeper and is of tougher substance.

The point can be epitomized thus: there was a time when Americans could say that they were neutral but not impartial; in our time it is more fitting to say that America can be impartial but not neutral. In our time America need not be formally engaged in every war in the sense of being a combatant, but it is effectively engaged in every war in the sense that its strength is cast into the scale in every war, with or without intention, without regard to its desires or sympathies, perhaps

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even contrary to its interests. And this does not follow from any putative interdependent world. It follows from two fundamental governing facts. One is that war today is "total" war, fought not between armies but between whole societies and with all the resources of each society. The other is that America is economically the most powerful country in the world.

Neither of these needs to be elaborated. Into the weapons of combat in modern warfare go all the resources, instrumentalities, goods and capacities of a country. Whatever may be the findings of international law as between contraband and non-contraband, in the actual conduct of war there is little or no distinction. All or nearly all usable commodities and materials are munitions of war. The military potential of a country is the sum of whatever it has, can buy or can make, and of these the last is the most important. In other words, the most valuable military asset is a highly organized industrial system, which implies a high degree of technological advancement. The next most valuable asset is access to a country which has such an industrial system. This may be platitudinous, but the platitude states the second governing condition of contemporary international relations. A country as rich as America, as endowed with resources and advanced in technological experience and capacity, is constrained by those properties and qualities to play a decisive part in any war sufficiently prolonged, whether willingly or unwillingly, directly or indirectly, consciously or unconsciously. It must do so, that is, unless it elects to forego all economic relations with the world outside its borders. And it must do so not only after the outbreak of a war but before, since military power is developed before the beginning of a war rather than after. The determinant fact is that every transaction across the boundaries of a country, such as America, is affected with the political and military interest.

America can be neutral in law, then, but not in fact. It has not been neutral in fact in any recent war of any magnitude. It was not neutral in 1914-1918; it is not neutral in the present war in Europe; it is not neutral in the present war

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in the Far East. In 1914-1918 the violation of neutrality was in accord with national sympathies; in the present European war the violation of neutrality is even more clearly in accord with national sympathies; in the present Far Eastern war the violation of neutrality is not only contrary to national sympathies but in contravention of what is commonly conceived to be the national interest. But in no one of the three has there been real freedom of choice. If action has been in accord with desire it has been accidental; if action has run counter to both desire and interest it has been unavoidable. In the first of the three wars America did not even succeed in preserving technical neutrality. It was drawn into the war, in large part, because of the breach of neutrality. In the two present wars its hold on legal neutrality—that is, non-participation in fighting—is at best precarious.

The neutrality legislation, so called, of the last five years, an attempt to escape a predicament without analyzing its causes, has been an admitted fiasco. Certain points of entry into foreign wars may have been closed off, but fundamentally America's position in times of international upheaval remains what it was before. The periodic revisions of the Neutrality Act, the barely concealed process of nullification by revision under the stress of the outbreak of war, and the almost avowed circumventions by common consent are evidence of confession of failure, if not of the inevitability of failure. The very use of the word neutrality to describe the legislation begged the basic question of America's foreign relations. The hope, if not the intention, behind the legislation was not so much to preserve neutrality as to prevent entanglement in war. Rather, it was to enjoy the advantages of optional unneutrality in fact and at the same time to enjoy immunity from danger of war. On the one hand there were the economic penalties exacted by neutrality in fact and the forfeiture of the opportunity to use America's strength in the interests of the side it favored; on the other hand were the profits from war trade and the satisfaction of allegiances. The first minimized the risk of war; the second materially increased the risk. The second was chosen as the lesser of two evils. It was not a

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clear-cut choice, since in some respects the present course is a compromise with the evils of both positions. Profits are reduced; help to the side of American preferences is reduced; the risk of war is not reduced in proportion. At any rate the Neutrality Act has been emasculated.

The Act was abandoned because it attempted to reconcile the irreconcilable. For a country which by all the constituent elements of its social being has given political hostages to the world, it is not practicable to regulate or control economic intercourse with the rest of the world without registering specific political impacts on the rest of the world. The abandonment of the attempt to contrive neutrality by law was formal recognition of that fact. To make accessible to Great Britain and France the resources and industrial skills of the United States was indeed to militate against Germany's chance of success and thus to invite retaliation. To have refused to sell Great Britain and France arms, munitions and raw materials essential to armament, in order to avoid risk of retaliation, was for practical purposes to ordain their defeat. The fact that either followed from a position stated in generalities, which had no combatants in mind and was a sort of declaration of impersonal rule of procedure, did not change the effect of its incidence. It was to determine victory or defeat. The fact that it was a rule of procedure laid down before the outbreak of war could exculpate America from guilt of conscious and premeditated election of victor, but did not change the fact of election. Either America had to put its strength behind the side that had free exchange, command of the seas and means of transportation, or it had to deny to that side those advantages and by the same token reinforce the side that had adopted a policy of militarization in advance—in the present instance Germany and Japan.

The Far Eastern war offered the conclusive demonstration of impracticability—a demonstration almost *ad absurdum*. Despite all the statutory provisions the American government did not find a state of war existing in the Far East in 1937—and has not yet so found. The reason, of course, was that to invoke the embargo on the sale of arms would be to penalize

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China more than Japan, since Japan was better prepared, and the American government as well as American public opinion did not want to penalize China and help Japan. When the European war broke out, the American government, supported by public opinion, moved to revise the Neutrality Act to permit the sale of arms under cash-and-carry limitations in order to make finished armament available to the British and French. Then there was presented both to the executive and legislative an insuperable task of draughtsmanship. For it was not possible to lay down a single rule of procedure which would help the British and French, since they had free exchange, command of the seas and means of transportation, without at the same time helping Japan, which also had free exchange, command of the seas and means of transportation. No single act could cover both hemispheres without militating against the national interest and national sympathy in the one, in order to serve interest and sympathy in the other. On balance it was chosen to help the British and French even at the expense of hurting the Chinese. It was a choice between evils. It was also a conclusive demonstration that any self-imposed restriction on freedom of trade in war time could also constitute a self-imposed handicap on political interest.

The attempt to legislate immunity from danger of war by restricting war-time trade was self-defeating also in the limits within which its operation was set. As was demonstrated in the Far East even better than in Europe, restricting the sale of armaments served little purpose if the export of raw materials was permitted. The sale of finished arms to Japan was negligible; but by the sale of metals, minerals, cotton, oil and machinery America munitioned Japan. If there was no risk of Chinese retaliation, that was only because China had no striking power across the Pacific. In effect there was no genuine neutrality. American strength was put on the side of Japan. In principle the strands of entanglement were of undiminished strength. Incongruously, the violation of neutrality was to the benefit of Japan in a war in which American sympathies and interest were on the opposite side.

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The limits set by the operation of the Neutrality Act were not imposed by governmental policy or lack of foresight. They were imposed by economic necessity. To have cut off the supply to Japan of raw materials essential to armament would have penalized certain American interests as much as Japan itself. The oil industry, machine tool industry, metal export trade, and, most of all, the cotton states of the South would have suffered severe loss. The ramifications of the loss to the South would have been national, and there would have been internal political repercussions. This alone served as deterrent. It would do so in any war. It is neither just nor feasible to expropriate certain areas, groups or classes in the name of the national interest or the claims of morality. And by this fact the use of preventive embargoes or punitive economic sanctions is rigidly limited until there is devised some governmental mechanism whereby the incidence of such use falls on the whole nation in equal distribution. There must be at the least some scheme of "equalization taxes" whereby the whole country is assessed to reimburse the areas, industries or groups expropriated on national political grounds—whether to minimize the danger of entanglement in war from trading with belligerents or to weaken a potential enemy. This is to say that there must be a much greater concentration of economic power in the government than American opinion would now endorse. But such concentration of economic control is the first prerequisite to any attempt to correlate international economic processes with international political policy. Without it all attempts will prove as abortive as the neutrality legislation of 1935-1940.

Even with such control, however, only the periphery of the problem will be touched. Suppose, for example, there had been such control in 1937 and raw materials had been shut off from Japan, with reimbursement for the industries affected. So far as neutrality is concerned, the harm would already have been done; and so far as the detriment to the American national interest is concerned, the harm would already have been done. For it was not really after the outbreak of the Chinese-Japanese war that America armed Japan; it was be-

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fore. The war started in July 1937. The Japanese had begun feverish preparations for it more than a year before. The armament program had been under way since 1932, without being specifically aimed at any one nation. Both Russia and China were in question. In 1936 and the first half of 1937 the program reached its high point. It was then that Japan did most of its buying from abroad for war purposes. It was then that the United States sold the huge quantities of scrap metals, oil and cotton that went into the reserve on which invading Japanese armies in China were drawing in 1938. It was with the scrap metals then bought that the bombs were made that later were to be dropped on the U. S. S. *Panay*.

In 1937 Japan bought roughly 40 per cent more abroad than it had in the previous year. Significantly, its imports in the first six months of 1937—the six months before the outbreak of war—totalled some two and a half billion yen, only two hundred million yen less than the imports for the whole of 1936. This was the year in which Japan's unfavorable balance of trade came to more than six hundred million yen, although exports had exceeded the previous year's by more than five hundred billion yen. In 1936 Japan's imports from the United States totalled Yen 847,000,000, in 1937 they came to Yen 1,269,000,000, an increase of almost 50 per cent. In 1936 Japan imported from the United States ores and metals valued at Yen 122,000,000, in 1937 ores and metals valued at Yen 472,000,000, almost fourfold.[1] In the first six months of 1936 Japan imported raw cotton from the United States valued at Yen 213,000,000, and in the first six months of 1937 cotton valued at Yen 258,000,000, an increase of more than 20 per cent. In imports of oil from the United States there was an increase of more than 25 per cent, in machinery and parts an increase of more than 100 per cent.[2] Japan, then, was laying in its war supplies before the outbreak of war, and for the first few months of the war its success or failure would have been unaffected by the invocation of any embargoes either on arms or raw materials for armament.

[1] Figures from *Japan Year Book, 1939-40*, chapter xi, "Foreign Trade".

[2] Summarized from *Japan-Manchukuo Year Book, 1938*, p. 483.

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Perhaps more important: Japan was progressively emancipating itself from dependence on the outer world either for arms or essentials for armament by developing its own heavy industry. It had begun to do so soon after the invasion of Manchuria and the manifest international displeasure that incurred. Between 1932 and 1936 American tool machine exporters were equipping Japan with the means to fabricate its own armament, that is, providing it with plant, and to a great extent Japan has been able to carry on through three and a half years of war, with China tenaciously resisting and the rest of the world sabotaging or trying to sabotage, because in the years just preceding, it was equipping itself in key industries—equipping itself principally by purchases from the United States, Great Britain and Germany. And it continued to do so throughout 1938 and 1939, low though its supply of free exchange was running. Now, it is hardly fanciful to say that the United States and Japan may be at war within a few months. In that case American boys will very likely be blown to bits by shells made of American materials with American machinery. America will then have armed its enemy—not just American armament makers, the stock villains of the conventional international melodrama, but all American industry, the whole of the American economy. America will have done so though acutely aware of the danger of a war with Japan. Plainly it will have done so because it could not help doing so.

What alternative was there except such as lies either within the realm of fantasy or within the scheme of totalitarianism? Could every commercial transaction with Japan have been submitted to judgment and permitted or forbidden according to whether or not it helped the Japanese army or navy? Could a cease and desist order have been laid against every export agent who managed to get a Japanese contract for a small machine used in a plant for treating caustic soda? In the years before 1937 Japan was building up its industrial chemicals industry. It was doing so with a view to fortifying itself with reserves in the event of war, no doubt; but it would have had to do so, too, under the most pacifistic régime, since

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industrial chemicals are essential at the level of industrialization at which Japan has now arrived. How could it have been adjudged to which purpose a machine bought in America would ultimately lend itself, to the exclusion of all other purposes? And since nearly all the commodities that figure in foreign trade, excepting only consumer's goods, lend themselves to both purposes, practically all trade with Japan would have had to be suspended. Even imports would have had to be forbidden, since all purchases from Japan provide it with foreign exchange with which to buy elsewhere materials for armament that might be used against America. There would have to be, then, an absolute, centralized governmental control of all foreign trade, with the right of review over every transaction and judgment given according to whether every purchase or sale might inure to the enhancement of the military strength of any Power which might be hostile. The judgment would in nearly all cases have to be in the form of an injunction, since for practical purposes almost all exports are of military use. In a word, there would have to be totalitarian control, exercised so as to suspend nearly all foreign trade. And in a world in which foreign trade is an integral and indispensable part of the economy, this would be not only totalitarianism but fantasy.

What is true of America's relations with Japan is true in only lower degree of its relations with certain other countries. The same dilemma is present in American relations with Germany. It is not fanciful, too, to say that the United States may be at war with Germany in the next few months. Yet since 1933 America has contributed materially to the rearming of Germany under the Nazis, again not unaware, especially since early in 1938, of the import of the Nazi militarization. And what recourse was there? In that case, too, there was no practicable choice other than to help make it possible for Germany to subjugate Europe and perhaps, in alliance with Japan, to get a foothold in Latin America and thus compel America to fight for its existence. In principle the same is true with regard to Russia. Since the outbreak of the European war, even after Russia's inferential adherence to Ger-

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many, American exports to Russia have increased by 100 per cent, despite some efforts to withhold certain strategic raw materials in the last few months for political reasons. Yet who can tell on which side Russia will finally array itself in the present struggle and where it will be with respect to America?

Certain conclusions seem to be clear. America cannot be genuinely neutral in any war between great Powers that is sufficiently prolonged. Nor can specific measures be taken for the purpose of ensuring neutrality. If the sale of arms, munitions and raw materials to all belligerents is permitted, an advantage is conferred on the side with a preponderant navy. If such sale is by law prohibited whenever a war breaks out, an advantage is conferred on the side which has armed in advance. Whatever it does in this respect will accrue to the advantage of one side or the other. Even if nothing at all is done, a choice will have been made by America in every war, and there will be the risk of retaliation. The best America can hope for is that the side on which it has conferred advantage wins, precisely as in the present war the only circumstance in which there would have been no danger of entanglement for America would have been a speedy and crushing Anglo-French victory. As it is, America is gambling on Germany's defeat.

America cannot be neutral and cannot take measures to ensure neutrality; nor is it wholly free to decide on which side it will confer advantages by lack of neutrality. But it does not wish to waive all freedom of will in world politics. In the first place, America has interests; it can be vitally affected by changes in the distribution of power in the world, as for example by the repercussions of German success on Latin America. In the second place, it is not inhabited by disembodied and inanimate objects; its people have preferences and sympathies. Therefore when such measures as have been undertaken to prevent entanglement by breach of neutrality are in conflict with interests or sympathies or both, it will act or desire to act in conformity with interests or sympathies or both. But if it does so, as it did in 1939 in modifying the

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neutrality law to permit Great Britain and France to buy finished arms, then it has committed an unfriendly act and laid itself open to retaliation more clearly than if the violation of neutrality had come about just in the normal course of international trade, as in 1915.

Freedom of choice cannot always be exercised, however. In the Far East, America hesitated to act in conformity with interests and sympathies, partly because the country was not yet sufficiently stirred to accept the risks and partly because the interests were not widely enough recognized in public opinion. Later America found its freedom of action in the Far East hampered by the very fact that there was a law which purported to lay down general rules of procedure. For so long as there is an effort to prescribe general rules of procedure—whether the accepted rules of international law or specific measures of war trade regulation—their application may have different results in different situations. Changes that were in line with sympathies and interests in the Atlantic conflicted with sympathies and interests in the Pacific. And so long as freedom of action was limited by law—whether international law or federal statute—the effects in the two areas could not be reconciled. They could be reconciled only by *ad hoc* regulations for each situation. This would mean, of course, the conscious use of trade in war time as a political instrument, perhaps as a political weapon. But if it is true that all trade in war time—or the suspension of trade by legislation—has a political consequence, then its conscious and calculated use as a weapon would be only formal recognition of that which is and the formal incorporation of that which is into the modern international system. To that extent freedom of action might be regained, no doubt at the price of risk, but perhaps of no more risk than is innate in the relationship of a great country to the rest of the world at a time of war.

Freedom of action is restricted more seriously than by a presumptive uniformity of the application of rules. More serious is the restriction set, not by relations with other countries, but by internal economic consequences. The use of trade as a political weapon, which may require cessation of trade—

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not trade in arms alone but all trade—inflicts losses which the country is unlikely to bear whether it can or not. And most likely it cannot bear them without profound changes in its governmental system, which in turn are reflected in the organization of its economic system.

More serious still is the restriction set by the fact that the past cannot be undone. Nothing can be more symptomatic of the change in international society and of America's place in international society than the fact of America's involuntary buttressing of Japan. There best is shown the inherent incompatibility of international economic forces and international political forces, the difficulty if not impossibility of striking any balance between foreign economic relations and foreign political relations. The fact is that no effective use can be made of trade or trade policy, either punitively or preventively, to attain political ends. Economic sanctions are impracticable—unless, that is, universally enforced and applied and even then within limits. Preventive regulations to ensure neutrality or non-entanglement do not work at all or work in a direction not intended. Conscious control and use of the national economy as an instrument of politics is impossible except in a completely authoritarian, totalitarian society. For a country of America's wealth and power only a few courses are open. It can, of course, cut itself off economically from the rest of the world. That may be dismissed. It can sit passive and fatalistic, helplessly watching its resources and its wealth going to uses disagreeable to itself, inimical to itself, and perhaps directly productive of future dangers to itself. Or, it can seek to counterbalance unfortunate and uncontrollable results of its economic relations by specific political policies and positive measures. If, for example, it cannot help building up Japan's military power, though that power be a potential danger, it can only redress the balance by seeking to check Japan politically. If for America this means being, as it were, coöpted into the system of power politics, then it is a fate to which it is constrained by the circumstances that govern and condition its being. It cannot escape being a weight in power politics. It can only exert its efforts to

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fall into the scale it prefers. Political policies or political consequences of its acts, whether of omission or commission, it cannot help; it can only redress them by active, positive political policies and measures. It must consciously use its physical power to attain its ends, whether by diplomatic pressure, threat of force or actual war. Whatever philosophy of international relations America may hold or think it holds, the intelligent conduct of America's relations with the rest of the world requires either complete withdrawal from the world (which need not be considered) or active participation in the world to the extent that is required for security and a relative immunity from the danger of war. In short, whatever unique or even distinctive character America once had in the world of nations has been lost. By its physical growth and economic aggrandizement it has given a hostage to the world—to the world of power politics so long as the world is one of power politics. Geography has been cancelled out, and logically arrived at philosophies of world relationship are pointless.

NATHANIEL PEFFER

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THE TAXATION OF EXCESS PROFITS I

FOUR important taxes that were not in use in the United States at the beginning of 1940 may come to be examined carefully in the next few years in discussions of federal fiscal policy. Two of these are the capital levy and the net fortunes tax, but they must remain in the background unless some movement develops to repeal the constitutional provision that in effect prohibits the federal government from imposing a direct tax unless it results in an average per capita payment the same in every state (the income tax is exempt from this requirement by constitutional amendment). A third is a federal manufacturers sales tax. A somewhat similar tax is used by a few states, but at very low rates and only in conjunction with substantial retail sales taxes; the discouragement to a federal sales tax comes chiefly from the extensive use made by the states of general retail sales taxes at rates as high as 2 per cent and 3 per cent. The fourth tax, however, is of immediate concern, and forms the subject of the present article.

The General Scope of the Term "Excess Profits"

1. The federal government, in the Second Revenue Act of 1940, enacted an excess profits tax, which will almost surely undergo substantial revision within a few months. The object here is not, however, to analyze that particular law, but to promote a discussion of the more important technical problems that must be faced in deciding whether any excess profits tax at all is to be utilized and, if it is, what the chief provisions are to be. Moreover, it will be assumed that the tax is designed as a permanent part of the system, not merely as a defense-finance or war-finance measure.

2. At least fifteen countries[1] employed the tax during the World War. It appears that all of them—certainly the great

[1] Australia, Austria, Belgium (shortly after the World War), Canada, Denmark, France, Germany, Great Britain, Italy, the Netherlands, Norway, Russia, Sweden, Switzerland and the United States.

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majority of them—repealed it shortly thereafter. Several of the countries engaged in the present European war (including France, Germany and Great Britain) have reintroduced it, and a few others have used it in recent years.[2]

3. In what is to follow it will be assumed that the excess profits tax under discussion, if enacted in a neutral country, would not be restricted to profits arising from the foreign war. Some of the European neutrals during the World War did so restrict the tax in principle,[3] but the information available suggests that in practice this feature counted for little. In Denmark and the Netherlands, and possibly elsewhere, the burden was on the taxpayer to show that his excess profits were not due to the war, and his attempts to adduce such proof were probably of little effect.

4. In a determination of the general scope of the tax, the most important question is whether it is to be restricted to income from capital, particularly capital used in the course of business (as contrasted with consumers' capital such as a home owner's dwelling). No satisfactory test for excessiveness of income other than from capital—i.e., chiefly wages,

[2] Alfred G. Buehler, "The Taxation of Corporate Excess Profits in Peace and War Times", *Law and Contemporary Problems*, vol. VII, No. 2, Spring, 1940, pp. 291-300. A discussion of the recently enacted excess profits tax of Great Britain is to be found in Ursula K. Hicks, *The Taxation of Excess Profits in War-Time* (Manchester Statistical Society, 1940); for that of France, see the footnote to No. 88 below. Proposed changes in the new Canadian tax are discussed in *Barron's*, July 22, 1940, p. 18. The State of Queensland in Australia has based its regular corporation tax on the amount of profit considered in relation to capital investment. *Law Book Company's Taxation Service*, Australia, May-June 1940, p. 659.

[3] Denmark, Sweden (in a revision of the law), Norway and the Netherlands. Karl Bräuer, "Die Besteuerung der Kriegsgewinne in den Europäischen Staaten", *Finanz- und Volkswirtschaftliche Zeitfragen*, 77 H., 1921. Of the World War belligerents, Italy seems to have gone farthest in attempting to restrict the tax to excess profits caused by the war, and some interesting problems arose as a result. Luigi Einaudi, *La guerra e il sistema tributario italiano* (New Haven, 1927), pp. 132-34, 142, 146-47. See also Luigi Nina, "L'imposta sui profitti di guerra (Note pel dopo guerra)", *Giornale degli Economisti*, 1919, I (vol. LIX), pp. 268-69; Robert M. Haig, "The Taxation of Excess Profits in Great Britain", *American Economic Review*, Supplement, December 1920, p. 11, and Josiah Stamp, *Taxation During the War* (London and New Haven, 1932), pp. 147-50, 184.

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salaries, and some part of brokers' and agents' fees, professional fees, and farming income—has yet been suggested. In the United States, the Act of October 3, 1917 extended the excess profits tax to the income from "professions and occupations"; and wherever there was no invested capital, or not more than a nominal amount, the tax was simply 8 per cent of the net income after a deduction (allowed only to citizens or residents, and domestic partnerships) of $6,000 or (domestic corporations) $3,000. This 8 per cent tax was abandoned in the revision made by the Revenue Act of 1918; it had obviously accomplished little toward defining excess profits or excess income arising otherwise than from the use of capital.

Some of the foreign laws during the World War applied the tax to "business" activity, even where little or no capital was used (e.g., certain brokers and agents) but not to non-business activities, even though capital was used (e.g., professional men). The Revenue Act of 1918 drew the line in still a different manner; it taxed only corporations, and exempted "personal service corporations", whose chief income was not derived from capital.

If the tax is to be supported largely on the grounds that it tends to absorb income of a kind that is not necessary to stimulate work, saving, uncertainty-bearing (see No. 15 below), and willingness to risk, and, per dollar of revenue raised, has a relatively small effect in restricting production, it can in principle be extended to all non-incentive income, whether from capital or other sources. The search for a measure of excessiveness of salary, wage, professional and farm income (aside from the capital elements) may have important repercussions for the ordinary personal income tax—on the one hand in discovering capital elements where none are now recognized under the income tax law, as in the expenses of training for a profession, and on the other hand in making more explicit some of the connotations of excessiveness that probably lie back of the existing surtax rate schedules of the individual income tax.[4] If the percentage share of the national income

[4] See the proposal by R. W. Green, "An Excess Income Tax", *Economic*

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represented by public revenues grows much larger, there may be great pressure to reconstruct the tax system by looking to the rewards of the several agents of production in each industry, bearing heavily in each case on the economic rent, or non-incentive, part of the reward. Obviously, the techniques for this approach are in an extremely rudimentary stage of development, and the present discussion will concern itself, not with the broader topic of taxable economic rent elements in general, but with that particular rent element known as "excess profits", associated with the business use of money capital and capital instruments in general. Not even this restricted area has in practice been fully included; a discussion of this point is deferred to Nos. 52-68 below.

The association of profits with capital is adopted here because of its convenience in view of the scope of the present discussion; an analysis of the taxation of excess income on a broader scale, to include the rewards to other factors of production, would probably associate profits with all types of reward.[5]

Appeal to Individual Experience versus General Treatment[6]

5. To determine whether current profits are excessive, and hence taxable, it is possible to use either of two chief methods —or some combination of the two. Under one method the current profits are compared with actual profits gained in some previous period ("base period", commonly, in practice, a "pre-war period"). Under the other method the current profits are compared with some percentage of the invested

Journal, 1920, pp. 542-49, to levy an "excess income tax" on the excess of the total income of the individual over his average income for the previous three years, with a refund at two-thirds the tax rate on negative excess.

[5] "To-day we must surely admit that the decision whether any factor of production is to be paid by a share of profits or by a previously fixed reward does not depend on the nature of the service rendered. Profit is not in any sense correlative with wages and interest. The distinction between wages and interest does depend on the nature of the service; the distinction between them and profit depends on the way the service is remunerated." J. R. Hicks, "The Theory of Uncertainty and Profit", *Economica*, May 1931, p. 177.

[6] See Thomas S. Adams, "Should the Excess Profits Tax Be Repealed?", *Quarterly Journal of Economics*, May 1921, pp. 388-89; Haig, *loc. cit.*, pp. 153-54, 174; Stamp, *op. cit.*, pp. 74-75, 154, 170-78, 232-47.

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capital, this percentage being supposed to give a hypothetical "fair return"; any excess of current profits over this fair return is taxed. For instance: a concern may have gained an average annual profit of $1,000,000 in the (say) three years of the "base period", i.e., a period some time before—usually immediately before—the introduction of the tax; its profit for the current taxable year may be $1,200,000; and its invested capital, $20,000,000. If the base-period standard is used, excess profits tax is due on $200,000; if the invested-capital standard is used, and the "fair return" set at, say, 10 per cent, there are no excess profits.

6. The distinction is commonly drawn in the terms used above—base-period standard versus invested-capital standard. But the particular invested-capital standard chosen might itself reflect the experience of the base period; the percentage that denotes a "fair return" might be derived from that experience. If the earnings of all concerns in the base period averaged 7.6 per cent of capital, the fair return in the taxable year might accordingly be set at 7.6 per cent. Hence "base period" and "invested capital" might simply reflect two aspects of one technique. But in practice they have usually reflected a distinction that is fundamental: a distinction between (1) treating each taxpayer as a special case, whose excess profits, if any, are to be ascertained in the light of his own particular business history, and (2) treating the taxpayer under certain general provisions (whether or not these provisions are derived historically), without regard to his own particular experience. Thus if two taxpayers show for the current taxable year (which we may suppose to be the first year of the tax, to avoid for the moment questions of loss carry-over, etc.) the same absolute amount of profits and invested capital, they may pay different amounts of tax under the first principle above (treating each taxpayer as a special case); they will pay equal amounts under the second. The first method may be called the base-period method, for it necessarily involves some appeal to the base period, either to absolute amount of earnings, or to the ratio of those earnings to the invested capital of that period. The second may be

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called the general-percentage method, since it must use the percentage technique,[7] and the percentage must be the same for all concerns (or, if it does vary, the variation is on some basis that applies generally to everyone—for instance, according to size of firm, degree of risk in the industry, etc.).

The treatment of each taxpayer in the light of his own particular experience is useful, though far from infallible, when it is desired to tax only "war profits" or "defense profits", exempting other profits, even those that might be judged excessive under broader tests; and it may serve to tax war profits and defense profits that would not be deemed excessive under those other tests.

7. The two techniques and their combinations form a list of six chief possibilities. The amount of the taxpayer's current profit that is tax free as merely a fair or standard profit may be determined by appeal to:

(a) The experience, in the base period, of the taxpayer as respects the absolute amount of his profit, without regard to his invested capital, past or present. Although this method is administratively perhaps the easiest of all, it is so obviously faulty in principle—disregarding as it does the subsequent expansion or contraction of the concern—that it would be found indefensible within a year or two. Apparently no excess profits tax has ever been built solely on this basis.

(b) The experience of the taxpayer as respects the absolute amount of his profit (but not his invested capital) in the base period, with adjustment for increases and decreases in his invested capital subsequent to the base period—this adjustment to be made in accordance with some one of the percentage methods in (d), (e), or (f) below, but not necessarily using the same percentages for increases in capital as for decreases in capital (see No. 14 below). This method has the administrative advantage of requiring no computation of invested capital except the computation of increases or decreases in capital subsequent to the base period. By relying so strongly on individual experience, this method will almost surely, in

[7] That is, a simple comparison of aggregate base-period profits of all concerns with aggregate current profits would be of no significance.

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a significant number of cases, freeze into the exempt category some monopolistic profits, or some profits arising from a favorable stage in a business cycle or growth cycle of the concern in question: and reverse considerations hold for concerns that happen at that time to be experiencing competition of abnormal intensity, or subnormal points in one or another cycle. This method, or some variant of it, typically in combination with (f) below, was used in almost all of the World War excess profits taxes.

(c) The experience of the taxpayer in the base period as shown by the percentage return on his capital at that time (so that if one taxpayer showed, in the base period, a 10 per cent return and another, a 20 per cent return, the former could be taxed on all current profits over 10 per cent of current invested capital, and the latter only on current profits over 20 per cent). This method, even more than (b), gives weight to the conditions that were affecting the particular concern in the base period. It was used in Italy, during the World War,[8] and, in a highly restricted degree, by the United States in the law of October 3, 1917 [in combination with (f) below].

(d) The base-period experience of some group of taxpayers (in an industry, in a region, etc.) of which the taxpayer is a member, this experience being of course in terms of a percentage return on the capital invested. Here there is less emphasis on the particular concern's cycle of growth or decline or degree of departure from competition, with a correspondingly greater chance for the business cycle, or the industry's own cycle, or its general departure from competition, to influence the result. None of the World War taxes placed much emphasis on this method, but for a business concern that was "not in existence" during the whole of at least one calendar year of the base period, the federal war-profits tax of 1918 [Sec. 311 (c) (2)] computed the fair return by using the average (median) percentage return received during the base period by all corporations "engaged in a trade or business of the same general class as that conducted by the taxpayer", with a minimum of 10 per cent.

[8] Einaudi, *op. cit.*, pp. 138-40.

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(e) The base-period experience of all taxpayers as a group, this experience being of course in terms of a percentage return on capital invested. Here it can be clearly seen, as indicated above, that base-period experience does not necessarily imply individual treatment of each taxpayer. None of the excess profits taxes of the World War used this method, probably because the expense and trouble involved in computing aggregate base-period profits and invested capital to obtain a single percentage figure would be greater than any gain in fairness that might be obtained over the "common-sense" method, next to be described.

(f) Some percentage return on capital that rests on general observation or common sense, or at least does not require appeal to the experience of a base period. This method, usually in conjunction with (b) above, was commonly used in the World War. It does not necessarily mean a uniform rate for all taxpayers, though in practice it usually did; an exception was Great Britain, where administrative authorities had the power to vary the rate among different industries in accordance with differences in risk. The basic problem is, of course, how to apply general observation or common sense to get a reasonable percentage. Apparently none of the percentages used have been arrived at through a large-scale statistical study. The legislatures of most of the countries seem to have assumed that something in the neighborhood of 8 to 10 per cent was appropriate.

A seventh method, not really coördinate with the others, is to appeal to the current (not base-period) experience of other concerns. It was used in the United States under the "relief" or "special assessment" provisions, discussed in Nos. 82-86 below.

8. Methods (a) and (f) above are pure base-period and general-percentage, respectively; methods (b) to (e) inclusive are combinations. The tax may, however, contain not only combinations but also options—for instance, there may be an option between combination-method (b) and pure-method (f). The option may be either the government's (the taxpayer must use the method that gives the higher tax) or the taxpayer's.

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The legislator may want to place chief reliance on the pure general-percentage method, but obviate possible hardship by allowing the firm to appeal to its base-period experience (taking account, usually, of changes in invested capital since that time), if such an appeal indicates a higher fair return and hence a lower tax. Perhaps the granting of this kind of an option reflects nothing more than a feeling of uncertainty as to which method is preferable, or even a slight leaning toward the base period. The option has sometimes been expressed in converse terms: the taxpayer is required to compute the fair return as shown by base-period experience, but the law fixes a minimum percentage (in terms of current profits on invested capital) below which the fair return cannot legally fall. Thus if a firm has a base-period profit (adjusted for subsequent changes in capital) of $1,000,000, a current profit of $1,900,000, invested capital of $16,000,000, and if the minimum fair return is 10 per cent, the tax is due, not on $900,000, but on $300,000. This device was used in the war-profits tax of the Federal Revenue Act of 1918. Sometimes the option is so restricted that the relief it gives seems scarcely worth the trouble it entails; the Federal Revenue Act of 1917, for instance, set 7 per cent as a minimum fair return and 9 per cent as a maximum fair return, so that the right (and duty) of each taxpayer to appeal to his base-period experience did not help him (or harm him) much.

The same technique may reflect, instead, a desire to reach increases in profit from the base period even though some or all of the increased profit represents only a normal return. Thus if the invested capital in the example above is $26,000,000 and the 10 per cent is a maximum instead of a minimum, the tax may be imposed on $900,000, although that would mean taxing profits above a low percentage return (3.8 per cent in this case). Or, if there is also a minimum fair-return rate, say 5 per cent, then only a part of the $900,000—in this case $600,000—would be taxed. Here the option is against the taxpayer.

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Some Base-Period Problems

9. Some problems that are more or less peculiar to the base-period technique may be noted.

It is necessary to decide what year or years shall comprise the base period. The World War taxes commonly used the two or three years immediately preceding the introduction of the tax; in details, however, there were a number of differences. Thus the British taxpayer selected any two of the last three pre-war years and averaged them; or, if the three-year period was for him a time of abnormal depression, he could average any four of the last six pre-war years.[9] The United States taxpayer averaged the three years 1911, 1912 and 1913 (but a loss was included simply as zero income).

10. The definition of "profits" or "income" may have changed during the time between the base period and the excess profits taxable year—at least the definition as given in an ordinary income tax applying throughout the period. In principle, it would appear that the base-period profit should in this case be recomputed in accordance with the current definition; but the administrative difficulties of such a procedure are obvious.

11. The relations of two or more concerns during or subsequent to the base period raise some interesting questions. If two or more concerns of the base period later merge, presumably the two or more base-period figures will also be merged (added algebraically, perhaps, if there is a loss to consider) in computing the tax-free fair return. In Great Britain one result was a "lively traffic in bankrupt or near-bankrupt concerns which were prosperous before the war."[10] If a concern has changed ownership during or after the base period (no merger, etc., being involved), is the base-period experience to be computed as though no such change had occurred? Both British and American answers were in the affirmative (provided the trade or business remained the same),

[9] Haig, *loc. cit.*, pp. 14-15, 73-74; Stamp, *op. cit.*, pp. 155-57.

[10] Haig, *loc. cit.*, p. 149.

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but the British also granted an option of proceeding as though the concern were a new one.[11]

12. Some provision has to be made for firms that did not come into existence in time to utilize the full base period; and, in practice, some relief provision will usually be made for taxpayers whose base-period experience was especially distressing. A complete abandonment of the base-period technique for these firms is of course one possibility; another is to appeal to the base-period experience of similar firms, finding their percentage return in that period and applying it to the taxpayer's current invested capital. Another is to assume that in any case base-period profits were a certain minimum (No. 8 above). There may be some difficult questions as to when a given business actually came into existence. A new corporation may use the old assets, old location, and trade name of a corporation that went bankrupt, and the new corporation may or may not be owned by the former interests; or an individual may sell one type of store, e.g., a hardware store, and buy another, e.g., a furniture store.[12]

13. A change in profits from the base period may be due to the more or less rapid working of a mine or other natural resource. The kind of adjustment, if any, needed in this case depends on the larger problem of the accounting period, especially as concerns an averaging of profits and a carry-over of losses (Nos. 79 and 80 below.) [13]

14. Where the computation of a "fair return" starts from an absolute figure of profits in a base period and proceeds by adding or subtracting a percentage of capital that has been put in or withdrawn from the firm up to the taxable year [method (b) in No. 7 above], it is apparent that the granting of a high percentage rate at the insistence of firms that have increased their capital will be correspondingly unsatisfactory for firms whose capital has decreased compared with the base period. The British policy was to fix two percentages, the

[11] Haig, *loc. cit.*, pp. 79-80; Robert H. Montgomery, *Excess Profits, Estate, Gift, Capital Stock Tax Procedure, 1926* (New York, 1926), pp. 92-94.

[12] Montgomery, *op. cit.*, pp. 94-96.

[13] Stamp, *op. cit.*, p. 82.

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lower one to apply when capital was decreased.[14] Where an option method is used (No. 8 above), and the option is against the taxpayer, it would be harsh to require the use of the higher percentage to adjust for a decrease in invested capital.

Allowances for Differences in Risk[15]

15. Whether allowance should be made for differences in risk is a question that received little overt recognition in the World War tax laws—surprisingly enough, in view of its great importance. One technical device available is to vary the percentage of return allowed, in accordance with some rough idea of the degree of risk. This was a feature of British procedure, the percentages being fixed by an administrative board; it appears that in no other country, however, was this approach utilized.[16] Another device that might be turned to this end is the "special assessment" or "relief" provision discussed in Nos. 82-86 below, although as actually worded it was not well adapted to cover differences in risk. An appeal to base-period experience might on first thought seem to be helpful, but this is not so—at least, not as to the kinds of appeal discussed in No. 7 above. The actual experience of one firm cannot fully reveal the degree of risk it faced; and the experience of an industry, if averaged to give a single figure, of course tends to average out the risk element. An approach to an answer might be made by measuring the degree of dispersion of profits (both positive and negative) shown by firms in the industry in the base period—and possibly also in the current period—but the crudeness of the result would be obvious.

These comments might be taken to apply to risk in the sense of "the chance of obtaining a smaller return than the actuarially probable return".[17] Thus if a concern enters a

[14] Haig, *loc. cit.*, p. 78; Stamp, *op. cit.*, p. 171, note.

[15] See Twentieth Century Fund, *Facing the Tax Problem* (New York, 1937), p. 288; Haig, *loc. cit.*, pp. 127-37.

[16] Moreover, the new British excess profits tax does not include a similar provision. U. K. Hicks, *op. cit.*, pp. 10-11.

[17] A. C. Pigou, *The Economics of Welfare* (4th ed. London, 1932), p. 774: ". . . a £ might be lent to somebody: and there might be 96 chances of its return in full, 1 chance that 10s. would be returned, 1 chance that 5s. would be

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field because it will either gain $100,000 more than normal profit or fall $100,000 short, and the chances are even, it (or other similar firms) needs the right to keep the full $100,000 gain if it gets it; an excess profits tax on the $100,000 presumably tends to drive resources away from this field. Over and above the need for the $100,000, may be the need for payment for "uncertainty-bearing".[18] But it seems likely that most of the business risks from which excess profits arise cannot be realistically described in terms of more or less definite probability distributions.[19]

16. Development of techniques for taking account of differences in risk involves, among other things, decisions as to whether allowances should be made for each firm, or only for industries as units (this was the British practice),[20] or for age-groups in units (e.g., newly established concerns in general might be considered to face higher risks and more uncertainty-bearing than others), or for size (large concerns might be considered to face lower risks because of grouping of risks and for other reasons). It raises the question whether cognizance should be taken of the amount of capital at stake in the business as distinguished from the amount actually invested in the business, as in underwriting risks or in any partnership or sole

returned, and 2 chances that none would be returned. The actuarial value of this scheme of prospect [i.e., the actuarially probable return] is £$\frac{96\frac{3}{4}}{100}$: the most probable return is £1."

[18] ". . . an uncertain prospect actuarially worth £100 of money is much less satisfactory than a *certain* prospect also worth £100 of money. This follows from the law of diminishing utility. One income of £90 plus one of £110 carry less satisfaction, other things being equal, than two incomes each of £100. . . . The payment for uncertainty-bearing, therefore, consists, not in the whole of the excess above normal profits earned by these successful undertakers, but only in that (generally small) part of this excess which is not cancelled out by the corresponding losses of other undertakers who have fallen out of the race." Pigou, *op. cit.*, p. 776. A counterbalancing factor, to some extent, is the "taste for gambling", where there is a chance for a very large gain. J. R. Hicks, *loc. cit.*, p. 182.

[19] Compare the views of J. R. Hicks, *loc. cit.*, p. 171, and Frank Knight, *Risk, Uncertainty and Profit*, No. 16 in the Series of Reprints of Scarce Tracts in Economic and Political Science, London School of Economics and Political Science, pp. 224-32.

[20] Adams, *loc. cit.*, pp. 380-82; Stamp, *op. cit.*, pp. 75-78, 171-74, 176-77.

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proprietorship where unlimited liability exists. It plays a part in answering some of the questions considered below on loss carry-overs, the business unit for tax purposes, etc., and raises the issue of granting refunds, or even bounties, to concerns that fall below the normal level.

The problem is particularly baffling because in principle the law needs to exempt even the highest return that was anticipated, if it is not to restrict investment in the business in question. The use of "normal" in indicating the tax-free amount is misleading; so long as there is a chance of subnormal profits, the corresponding supranormal profits have some claim to exemption. But when the number of cases of, say, the highest return contemplated begins to outrun the expectations on which investment was based, somebody—or to some extent everybody?—is getting more than he needs to. However, calculations of this type are probably unrealistic, as indicated above, though it is not clear what substitute line of reasoning is to be applied. A mitigating factor is the likelihood that the tax rate will not in practice be 100 per cent, except for short periods of emergency.

As a concern moves from a position where its prospects are poor to one where its prospects are good, it will rise in value, and hence there will accrue, and perhaps be realized, a capital gain (e.g., the concern sells all its assets to another taxpayer). If the good prospects are no more than need to be obtained (once every so often) to maintain investment in the industry, the standard return is presumably set high enough so that the annual earnings will fall below it. But the capital gain may be so large as to fall far above it, although, if the income is to be exempt, the gain should also be exempt. A technique for spreading the capital gain over several years (for purposes of computing taxable income) may be required.

The First Year's Invested Capital

17. The computation of invested capital has been generally considered the chief difficulty under the excess profits tax. Some of the comments give the impression that the difficulty is largely administrative. Severe administrative problems are present, no doubt, even if the drafters of the law have de-

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veloped a consistent, inclusive conception of invested capital; but much of the administrative tangle (at least in the United States) seems to have resulted from the lack of such a conception. This is not strange, for the excess profits tax involves inherent conflicts between aims that are generally recognized as desirable. In the impossible attempt to achieve all of the aims, the legislator is likely to write into the law inconsistencies that make the administrator's task difficult—and then to add internally inconsistent remedies for the initial inconsistencies.

18. The discussion of invested capital may be conveniently divided into the setting of a capital figure for the first year of the tax and the adjustments to be made later.

Only under methods (a) and (b) above is no figure of capital invested needed for the first year (the first plan uses no capital figure at all; the second, only additions to or subtractions from capital made after the tax is introduced). What, in principle, shall be the invested capital for the first year under the other methods? There are two extremes available, and some possibilities in between.

19. At one extreme is the current appraised value of the entire assets of the business, including good will, etc., as determined by prospective earnings and the rate of capitalization attaching to those earnings.[21] Under this method the tax, for all concerns in general and on the average, can reach only windfalls—i.e., profits the possibility of which was not foreseen at the time the tax was introduced or was, as it turned out, too heavily discounted. For the individual firm the situation is somewhat different. Thus (to illustrate by an oversimplified example), in valuing a given firm, when the tax is introduced, everybody may agree that it is either going to make $1,000,000 a year forever or make nothing forever, and that the probability of the latter is three times the probability of the former. Then, capitalizing at 5 per cent, the value—"invested capital"—is set at $5,000,000[22] (it should be even lower, if uncertainty-bearing is to be charged for). If the

[21] Thomas S. Adams, "Principles of Excess Profits Taxation", *Annals of the American Academy of Political and Social Science*, vol. LXXV, 1918, p. 157.

[22] Three chances of zero value averaged with one chance of $20,000,000 value.

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concern does make $1,000,000, the excess profits tax may get part of that profit, despite the definition of invested capital as the appraised value of the business at the time the tax is introduced. Whether it does or not will depend on whether the fair-return percentage is set to take full account of the risk factor (or, alternatively, whether refunds or bounties are given to the similar concerns that make no profit). If anything short of 20 per cent is set as a normal return in this particular case, some tax will be paid.

The chief argument for using the appraisal method is that only in this way can vested property rights be fully protected. Under any other method, those persons who had bought into the enterprise before the prospect of the excess profits tax became known would suffer a loss in capital value—a loss, that is, of the capital value that existed just before the tax was announced, not necessarily a loss of part of the purchase price. (And, as has just been shown, even under the appraisal method they would suffer a loss unless the tax somehow took the risk factor fully into account.)

20. At the other extreme the invested capital as of the first year might be set at zero. Only capital (including replacement capital) that was invested after the tax was introduced would be taken into account. This action would be based on the thesis that capital already in existence needs no reward—aside from liquid capital, chiefly in money form, that could be removed from the taxing jurisdiction. Hence if it seemed important enough to disregard vested property interests completely in an effort to raise large sums of money without checking economic forces, this extreme conception of invested capital might be considered. But the fact that vested property values were thus disregarded would presumably have a profound effect on accumulation and investment owing to a fear that the process would be repeated.

21. Neither of these extremes has been employed in any excess profits tax, nor are they likely to be, but they illustrate a basic conflict that has created so much apparent inconsistency in the actual laws—the conflict between the preservation of vested property rights and the need for raising revenue with a minimum impairment of incentives to work, save, invest, and

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bear risks and uncertainties.[23] If vested property rights are fully protected under the excess profits tax, the revenue yield will be correspondingly small, causing greater reliance on other taxes that may easily be more repressive. Some compromise in the definition of invested capital is evidently necessary.

A seemingly natural point for a compromise is the price paid for the business by the existing owner or owners. This compromise may, however, have several forms.[24]

22. If the business is organized under the corporate form, the "owner" may be regarded as the corporation; the present owner is therefore the present corporation; and the invested capital figure for the first year of the tax may be ascertained by finding what this corporation has paid for the business. But what content shall be given to the term "paid for the business"? Presumably it includes the amount paid when the corporation was formed and acquired the business, plus amounts paid for later additions, including those paid for by retaining earnings in the business. So far as it gave its own stock or its own bonds for the business or for the later additions, a value must be imputed to these securities.

The technical difficulties here are obvious (though one difficulty likely to be overlooked by the general observer is the simple one that records going all the way back to the last change in ownership may have become lost, or may never have been kept in full); no less serious, if not so obvious, are the differences in tax that arise from events readily seen by everyone to be essentially irrelevant. For instance, suppose that two businesses were founded at about the same time and incorporated at about the same time, with $1,000,000 of capital each; both businesses prospered, retaining $2,000,000 from earnings over a long period of years; their prospects are so bright that each would sell, as a unit, not for $3,000,000 but for $5,000,000. Shortly before anyone is aware of the pros-

[23] This reference to incentives implies, not that all working, saving, etc., tends to decrease as the reward decreases (*cf.* D. H. Robertson, *Economic Fragments* [London, 1934], pp. 1-22), but merely that some of these services tend to decrease over certain periods—especially, it seems probable, the risk-taking.

[24] Adams, *Quarterly Journal of Economics, loc. cit.*, pp. 377-80, and *Annals, loc. cit.*, pp. 152-53, 157-58.

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pect of a tax, one of the companies undergoes a reorganization, a new corporation being formed to take the place of the old one. The new corporation buys the business from the old one for $5,000,000. We may even suppose that the stockholders remained unchanged. Under the compromise conception of invested capital now being discussed, the one company can use an invested capital figure of $5,000,000, and the other one only $3,000,000, although there is no obvious reason for the difference from the point of view either of vested property rights or effect on economic incentives. The argument becomes still more confused if the new corporation pays, say, $6,000,000 for the old, the extra $1,000,000 apparently being some form of "water"; for now it will be said that the excess profits tax favors unsoundly financed concerns. This kind of objection was especially important under the United States tax of World War days.[25] But it would not be so important at a time when the tax had been preceded by little or no rise in prices or promise of extraordinary physical volumes of business and high profit margins. Such conditions of course combine to raise the dollar value of many a concern well above the price at which it had been acquired, plus additions to capital; hence so far as reorganization, etc., occurs shortly before the tax is introduced, there is an unusual chance for disparities to develop. The essential irrelevance has a chance of occurring, nevertheless, in every case where the business has been sold at least once (no matter how long ago) before the introduction of the tax.

23. The trouble lies deeper than that, however. Even if no business had ever changed hands, it would have to be conceded that (a) from the point of view of the protection of vested interests, any departure from the current-appraisal principle is wrong, and no one stopping place has any more logic to support it than another, while (b) from the point of view of getting as much revenue from the tax as possible without seriously checking economic incentives, there may be some optimum point between zero and current appraisal, but it is different for every concern and it bears little if any necessary relation to the most recent change in ownership; and (c) an

[25] But *cf.* the mitigating factors noted in Montgomery, *op. cit.*, pp. 129-30.

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attempt to combine the optimum under (a) with that under (b) must work without any self-evident rules for gauging the relative importance of the two. Nevertheless, the last change of ownership will probably continue to be the base line for compromise, if only because it gives a semblance of protecting vested rights. The most obvious inconsistencies can be greatly lessened by not allowing certain types of ownership change to affect the computation of invested capital, much as the income tax law now allows the reckoning of capital gain, or requires the reckoning of capital loss, to be postponed on certain types of corporate transfer (so-called "tax-free" exchanges).

24. Some concerns will have undergone no transfer for a long period—decades, perhaps. Some of them will have grown greatly in value, aside from reinvestment of earnings or the raising of new money. Not to recognize as invested capital such accrued but unrealized gain might be deemed too harsh.[26] Perhaps the tax law could offer all taxpayers the option of using the value of the concern as it stood, say, ten years before the tax.

25. There are two chief variants of this last-transfer conception of invested capital. Both, as implied above, include subsequent additions to capital, but one, the one used by the United States in the World War, does not deduct subsequent impairments of capital (although it may deduct impairments of surplus); the other, used by Great Britain, deducts all impairments.

> For example, if A invests $100,000 in a corporation in 1900, receiving therefor $100,000 in capital stock of the corporation, and the corporation proceeds to lose $50,000 in the course of trading during the next twenty years so that the real worth of the assets in 1920 is only $50,000, we would give the corporation an invested capital standard of $100,000 for the year 1920. In England the figure would be at $50,000.
>
> This fundamental difference extends moreover into the field of depreciation. Suppose, in the case cited above, that $50,000 of the $100,000 received for the stock was immediately invested in machinery with a life of 20 years, and that $2,500 was annually put in reserve for depreciation. In 1920 this reserve would consequently amount to $50,000. In this country we, of

[26] See the case of *La Belle Iron Works*, Montgomery, *op. cit.*, p. 130.

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course, do not permit the addition of this $50,000 reserve to the $100,000 original investment, and give the corporation an invested capital of $150,000. What we do allow is the $100,000 originally put in and we continue to allow that amount whether or not any depreciation deductions are made, whether the reserve which may be built up from such deductions is invested within or outside the business or whether it is lost through unwise investment or use. We even permit an increase in invested capital equal to any excessive depreciation deducted or for any realized appreciations in the value of invested reserves. A similar corporation in England, on the other hand, in 1920, when the machinery is scrapped, would receive no credit at all for it as invested capital except such part of the depreciation reserve of $50,000 as had been actually reinvested in the business. During the course of the depreciation of the machinery its value for invested capital would be the original cost minus "proper deductions" for depreciation plus the depreciation reserves reinvested in the business.

As a consequence the British concept of invested capital tends to be more a "current capital" concept than ours. Although neither they nor we reappraise assets periodically during their life, they tend to approach more closely the value of the assets actually at work during the current accounting period.

This distinction must not be overemphasized, however. In fact, the number of American corporations which benefit by virtue of it is undoubtedly small. In the absence of full allowances for net losses from period to period such relief is probably justified.[27]

In other words, under the no-deductions variant, the approach is from the liabilities side of the balance sheet; capital once put into the concern inevitably stays put in for good until it is paid out again to the owners.[28] Under the deductions variant, the approach is from the assets side of the balance

[27] Haig, *loc. cit.*, pp. 16-17. See also *ibid.*, pp. 81, 87; Montgomery, *op. cit.*, p. 102; Stamp, *op. cit.*, p. 166.

[28] This method raises some special questions of its own: e. g., shall the purchase by a corporation of its own stock be deemed to reduce the minimum figure for invested capital? shall the conversion of earned surplus into capital by a stock dividend be deemed to increase the minimum? how is the minimum to be affected by stock issued to employees under a bonus plan, or to officers in compensation for services? what if the stock is sold to employees, officers, etc., below par value, or below market price? shall deficits that are not allowed

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sheet; the capital actually available for the business and being used in it is obviously no larger than the value of the assets. The British technique is the more consistent; once a given share of capital is no longer functioning in the business, whether because it has been withdrawn or because it has been lost, there is no reason for giving the business a fair-return allowance on it so long as the relative situations of the individual owners of the businesses are not to be taken into account. The other technique, however, has some excuse in a law that fails to allow a carry-over of losses (No. 80 below). If a business incurs a loss in one year but is not allowed to deduct it from the profits of another year, the hardship caused by this provision may be mitigated somewhat by not requiring the business to deduct it from the invested-capital figure.[29]

26. Finally it should be noted that reproduction cost is sometimes mentioned as a possible standard for invested capital.[30] The result would presumably differ from both that of the current-appraisal method and that of the last-transfer method discussed in No. 22 above; but nothing very specific can be said about the differences until the exact content to be given to "reproduction cost" is stated. The chief items in question for purposes of computing net invested capital for the excess profits tax seem to be non-reproducible assets, and the extent to which obsolescence would be deducted and the cost of creating and maintaining monopolistic devices (and possibly other imperfections of competition) included.*

COLUMBIA UNIVERSITY CARL SHOUP

to reduce the existing minimum be carried forward to offset what would in later years be added to capital invested as earned surplus (or used to reduce a capital deficit, as the case might be)?

[29] In the United States, a further point arises in connection with businesses that last changed hands before March 1, 1913, the basic date for federal income taxation. See American Economic Association, "Report of the Committee on War Finance", Supplement No. 2, March 1919, of *American Economic Review*, pp. 19-20: Senate Report No. 617, 65th Congress, in *Internal Revenue Bulletin*, June 26, 1939, p. 53.

[30] Adams, *Quarterly Journal of Economics, loc. cit.*, p. 390.

* The second installment of this article will appear in the March 1941 issue of the QUARTERLY.—ED.

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WHO MAKES OUR LAWS?

SOME poet, philosopher, or soothsayer of the past is supposed to have remarked that he cared not who made the laws of a nation if he but knew who wrote its songs. This article is based on the assumption that it is important to know who makes the laws of a people, no matter who produces the songs which they sing. It is concerned with the men who manufacture statutes—the legislators. It is limited to members of state legislatures only—Congressmen and members of city councils do not figure in the data and observations which follow; and it inquires only into the occupations and professions—ways of earning a living—of lawmakers.[1]

I

Facts about the men who enact statutes are, presumably, significant only if they bear some relation to legislative behavior—significant only if they affect the content or form of laws, or influence the procedure by which laws are enacted. Throughout the American literature of legislation one encounters the supposition that the ways in which legislators earn their living are worthy of careful analysis. The validity of

[1] This article is part of an extended study of thirteen representative state legislatures, during six sessions from 1924 to 1934 or 1925 to 1935. The thirteen states are: Arkansas, California, Illinois, Indiana, Iowa, Louisiana, Maine, Minnesota, Mississippi, New Jersey, New York, Pennsylvania and Washington. The six sessions chosen bridge the political landslide beginning in 1930 and represent periods of both Republican and Democratic dominance. In case of legislatures having annual sessions (New Jersey and New York) only figures for the odd year sessions are used. For explanation of the methods used in compiling data, see article by C. S. Hyneman and H. Lay, "Tenure and Turnover of the Indiana General Assembly", (1938) 32 *American Political Science Rev.*, pp. 55-57, notes 9 and 10; and M. Fletcher, "The Use of Mechanical Equipment in Legislative Research", (1938) 195 *Annals of American Academy of Political and Social Science*, pp. 172-175.

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the supposition is usually not argued; such rationalizations as have been offered seem to me not very convincing. But the widespread interest in occupations which the literature reveals seems to justify an extended analysis here, even though there be severe limitations on the reliability of data and sharp doubt that conclusions which may be drawn will be of social significance.[2]

TABLE 1

DISTRIBUTION ACCORDING TO OCCUPATION OF ALL MEMBERS OF THIRTEEN LOWER CHAMBERS AND TWELVE SENATES DURING 1925-1935

	Number of Memberships	Per Cent of All Memberships	Number of chambers in which each occupational group occupied a given position of importance				
			First	Second	Third	Fourth	Fifth
Farmers	2722	21.5	8	11	2		2
Lawyers	3555	28.0	17	7	1		
Newspapermen	369	2.9			2	2	1
Other Professional Men	639	5.0		1	1	7	5
Bankers and Brokers	352	2.8		1		3	
Contractors	273	2.2			1		
Manufacturing and Industry	445	3.5		1	1	4	1
Insurance	484	3.8			2	3	1
Real Estate	385	3.0			2		1
Merchants and Other Business Men	1263	10.0		3	12	7	2
Engineers and Machinists	184	1.5					
Salesmen and Clerks	525	4.1		1		1	1
Laborers	205	1.6					
Not Otherwise Classified	704	5.5			2	1	10
Unknown	584	4.6					
Total	12,689	100					

[2] The principal limitations on the reliability of data are: (1) Only information given in printed biographical sketches and in tables printed in journals or other documents was available for twelve states; for Louisiana, data were collected by questionnaire or conversation. No doubt many of the data supplied in this fashion were inaccurate; perhaps many a man who called himself a contractor had better been classed as a workman. (2) Occupations were arbitrarily classified. Dorothy Schaffter found 152 different occupations and combinations of occupations in fifteen sessions of the Iowa legislature. All occupations are combined into fourteen occupational groups in this study. A "banker-lawyer", for instance, is called a banker, but a "lawyer-banker" is

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Occupational Distribution of Legislators

Table 1 shows the numerical importance of different occupational groups in a composite of twenty-five legislative chambers (occupations of California senators are not available) and indicates the relative importance of the more numerous occupational groups in the several chambers. Lawyers are seen to be the most numerous single group; lawyers and farmers together constitute slightly less than one half of all legislators.[3]

Most significant are the statements of rank. Lawyers were the most numerous group in seventeen chambers; in the other eight chambers they were either second or third in importance. In those chambers where lawyers were not preëminent, farmers outnumbered them. In only two chambers were farmers less than third in importance. Merchants and business men not otherwise classified (henceforth referred to as merchants) were the third most important group. In three chambers, they were the second most numerous group; in twelve chambers, they were third in importance.[4]

The information which appears in Table 1 is shown separately for each of the twenty-five chambers in Table 2. In addition, Table 2 shows for each house the numerical importance of the five leading groups. It will be noted that in only one case did either lawyers or farmers (one of which group

called a lawyer. (3) For many members, the occupation could not be learned. This makes all percentages inaccurate. Of 786 members who served in the Minnesota House of Representatives during 1925 to 1935, the occupations of 93 are unknown. This missing factor (11.8 per cent of the total membership) forces a large margin of error into any comparative figures which can be derived.

[3] Figures in Table 1 relate to memberships and not to different individuals. Any man, for instance, who served in three sessions during the period embraced in this study was counted three times.

[4] Table 1 indicates that ten different occupational groups were third in importance in twenty-six chambers, that eight different occupational groups were fourth in importance in twenty-eight chambers, and that nine different occupational groups were fifth in twenty-four chambers. Yet exactly twenty-five chambers were examined. This apparent error is due to the fact that when two occupations were equal in importance, they were accorded the same rank. Table 2 shows, for instance, that newspapermen and professional men were of equal importance in the New Jersey Senate. Both were listed as third in numerical importance in that body.

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is first in each house) constitute one half the six-session membership of a chamber. Farmers constituted 55.7 per cent of the 648 members who served in the Iowa House from 1925 to 1935. In only one other chamber (Iowa Senate) did farmers come within 10 per cent of a majority of all members. Lawyers amounted to more than 40 per cent of the six-session membership of eight different chambers. The best showing achieved by any occupational group other than lawyers and farmers was that of merchants who constituted 20.6 per cent of the Maine House.

But laws are not made by a composite of the members who serve in a series of legislative sessions; laws are enacted by the men who are present in a particular assembly. To what extent do lawyers or farmers control individual sessions of state legislatures?

It appears that in only one of the thirteen states, during the six-session period covered by this study, were farmers ever able to outvote all other groups. Farmers controlled five different sessions of the Iowa House of Representatives by majorities ranging between 54 per cent and 62 per cent of the entire membership; in 1925 they constituted 56 per cent of the Iowa Senate. The nearest approach of farmers to a clear majority in any other state seems to have been in the Mississippi Senate of 1925 when they constituted 42.9 per cent of the total membership of the chamber.

While lawyers were the most numerous single occupational group over a six-session period in seventeen of the twenty-five chambers studied, they seem to have enjoyed a clear majority in only six instances—twice in the Arkansas Senate (51.4 per cent and 60 per cent), twice in the New Jersey Senate (52.4 per cent and 55 per cent), and twice in the New York Senate (51 per cent and 54.9 per cent). In two sessions of the New Jersey House, lawyers, if correctly counted, represented exactly 50 per cent of the membership. In one session or another lawyers constituted more than 40 per cent of the membership of the lower houses of Arkansas, New Jersey and New York, and of the Senates of Arkansas, Illinois, Indiana, Louisiana, Minnesota, Mississippi, New Jersey and New York.

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TABLE 2

SHOWING THE FIVE MOST IMPORTANT OCCUPATIONAL GROUPS IN

Chamber	All Members	Occupational group and its			
		First		Second	
		Occupations	%	Occupations	%
Arkansas					
House	600	Lawyers	34.2	Farmers	26.7
Senate	210	Lawyers	49.1	Farmers	18.1
California					
House	480	Lawyers	34.3	Farmers	12.7
Illinois					
House	915	Lawyers	29.7	Farmers	12.6
Senate	306	Lawyers	32.7	Merchants	11.4
Indiana					
House	600	Farmers	24.0	Lawyers	23.5
Senate	300	Lawyers	34.3	Farmers	14.7
Iowa					
House	648	Farmers	55.7	Lawyers	11.6
Senate	300	Farmers	43.6	Lawyers	23.0
Louisiana					
House	600	Lawyers	32.4	Farmers	19.3
Senate	232	Lawyers	46.5	Merchants	13.8
Maine					
House	906	Farmers	23.8	Merchants	20.6
Senate	190	Lawyers	23.8	Farmers	18.9
Minnesota					
House	786	Farmers	36.9	Lawyers	18.1
Senate	402	Lawyers	40.3	Farmers	20.4
Mississippi					
House	839	Farmers	38.7	Lawyers	30.9
Senate	294	Lawyers	45.9	Farmers	24.8
New Jersey					
House	360	Lawyers	42.0	Prof. Men	6.1
Senate	124	Lawyers	45.9	Bankers	9.7
New York					
House	900	Lawyers	43.9	Farmers	12.1
Senate	306	Lawyers	46.1	Farmers	10.1
Pennsylvania					
House	1245	Lawyers	17.7	Salesmen	15.4
Senate	300	Lawyers	33.0	Mfg. & Ind.	14.0
Washington					
House	586	Farmers	27.5	Lawyers	15.4
Senate	260	Farmers	20.8	Lawyers	18.4

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TABLE 2

THIRTEEN LOWER CHAMBERS AND TWELVE SENATES DURING 1925-35

percentage of total membership

Third		Fourth		Fifth		Total Five Leading Occups.
Occupations	%	Occupations	%	Occupations	%	
Merchants	8.3	Prof. Men	7.3	Unclassified	6.2	82.7
Merchants	8.6	Prof. Men	5.7	Unclassified	3.8	85.3
Merchants	8.5	Newspapermen	8.1	Real Estate	7.7	71.3
Insurance	8.3	Merchants	7.9	Unclassified	7.7	66.2
Farmers	9.2	Prof. Men	6.9	Insurance	4.2	64.4
Merchants	12.7	Unclassified	6.0	Prof. Men	5.7	71.7
Newspapermen	7.7	Merchants	7.0			
		Mfg. & Ind.	7.0			70.7
Merchants	6.6	Bankers	4.8	Unclassified	4.2	82.9
Merchants	7.0	Insurance	5.7	Prof. Men	4.0	
				Unclassified	4.0	87.3
Merchants	12.5	Prof. Men	9.7	Salesmen	9.5	83.4
Farmers	12.1	Mfg. & Ind.	4.7			
		Salesmen	4.7			81.8
Lawyers	8.9	Mfg. & Ind.	8.2	Unclassified	8.0	69.5
Merchants	15.8	Mfg. & Ind.	7.4	Prof. Men	6.8	
				Unclassified	6.8	79.5
Merchants	9.8	Insurance	3.6	Prof. Men	3.4	71.8
Contractors	6.2	Merchants	5.0	Newspapermen	4.5	76.4
Prof. Men	8.2	Merchants	5.8	Unclassified	4.3	87.9
Merchants	7.8	Prof. Men	6.8	Unclassified	3.4	88.7
Unclassified	5.3	Merchants	4.4			62.2
Newspapermen	8.1	Insurance	4.4			
Prof. Men	8.1			Farmers	7.3	75.0
Insurance	7.5	Merchants	7.1	Unclassified	6.9	77.5
Mfg. & Ind.	9.5	Bankers	8.2	Merchants	5.2	
				Prof. Men	5.2	84.3
Unclassified	14.2	Merchants	11.6	Farmers	7.2	66.1
Real Estate	9.3	Prof. Men	6.3	Merchants	6.0	68.6
Merchants	13.8	Newspapermen	5.5			
		Prof. Men	5.5			67.2
Merchants	17.7	Bankers	7.3	Mfg. & Ind.	6.5	70.7

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Occupations and Positions of Leadership

Any account of the importance of ocupational groups in legislative bodies must take into consideration the distribution of offices of power and positions of influence. Examination of the allotment of committee chairmanships in twenty-five chambers during six regular sessions shows that the occupational groups which dominated the total membership also controlled most of the chairmanships, and, further, that chairmanships were divided among these occupational groups in approximately the same proportions as were all memberships. Lawyers were the most numerous single occupational group in seventeen of the twenty-five chambers; lawyers held more chairmanships than any other occupational group in twenty of the twenty-five chambers during the same period. Farmers were first or second in membership in nineteen chambers; they were first or second in number of chairmanships held in seventeen chambers. Merchants were second in importance in three chambers; they were first in point of chairmanships in one chamber, and second in two chambers.

Table 3 shows that in six instances, one occupational group held as many chairmanships as all other groups combined. Farmers held, during the six-session period, 53.6 per cent of the chairmanships of the Iowa Senate. Lawyers held 51.5 per cent and 51.9 per cent of the Senate chairmanships in Louisiana and Minnesota, respectively, 57.9 per cent of the House chairmanships in Mississippi, and exactly 50 per cent of the chairmanships of the Arkansas and Mississippi Senates. In only four other chambers did lawyers hold more than 40 per cent of the chairmanships.

Assuming that continuity of experience in legislative service reflects itself in ability to influence legislative product, it will be of interest to observe the tendency of different occupational groups to survive for long periods of service. Table 3 affords opportunity to do this. It takes into account the 1363 house members and 1021 senators who, at any time during the six sessions studied, were serving their fifth or later session of service. A comparison of this table with Table 2 reveals that far-

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TABLE 3

PROMINENCE OF LAWYERS, FARMERS AND OTHER OCCUPATIONAL GROUPS AS MEASURED BY POSSESSION OF COMMITTEE CHAIRMANSHIPS AND TENDENCY TO CONTINUE IN SERVICE

State and Chamber	Per cent of all chairmanships which were held by			Per cent of all legislators serving 5th or later sessions who were		
	Lawyers	Farmers	All Other Occupations	Lawyers	Farmers	Other Occupation
Arkansas						
House	42.8	19.6	37.6	45.0	35.0	20.0
Senate	50.0	16.9	33.1	57.1	14.3	28.6
California						
House	35.7	12.8	51.5	37.0	12.3	50.7
Illinois						
House	36.8	15.1	48.1	36.8	10.6	52.6
Senate	36.0	8.1	55.9	24.2	15.6	60.2
Indiana						
House	22.4	19.1	58.5			
Senate	32.2	11.3	56.5	17.3	17.3	65.4
Iowa						
House	23.8	43.9	32.3	13.8	58.7	27.5
Senate	13.9	53.6	32.5	18.4	36.8	44.8
Louisiana						
House	30.0	19.1	18.5	23.0	18.7	58.3
Senate	51.5	8.2	40.3	43.6	18.2	38.2
Maine						
House	11.7	16.8	71.5	9.1	4.5	86.4
Senate	24.5	19.1	56.4	36.0	28.0	36.0
Minnesota						
House	25.4	29.4	45.2	20.6	27.6	51.8
Senate	51.9	8.2	39.9	48.5	15.2	36.3
Mississippi						
House	57.9	16.5	25.6	60.8	22.8	16.4
Senate	50.0	20.5	29.5	27.7	34.0	38.3
New Jersey						
House	39.6	2.7	57.7	42.8	2.4	54.8
Senate	46.7	7.8	45.5	52.0	3.8	44.2
New York						
House	35.7	23.9	40.4	42.5	15.2	42.3
Senate	49.6	13.2	37.2	44.8	12.7	42.5
Pennsylvania						
House	26.7	7.1	66.2	22.5	6.6	70.9
Senate	37.0	1.0	62.0	34.0	4.3	61.7
Washington						
House	14.3	33.3	52.4	14.4	43.9	43.1
Senate	20.9	18.5	60.6	32.5	24.2	43.3

mers constitute about the same proportion of veteran legislators as they do of all members. Farmers constituted 55.7 per cent of the six-session membership of the Iowa House; they constituted 58.7 per cent of the veterans of that chamber during the

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same period. Farmers were the most numerous occupational group in the six-session membership of eight chambers; the long-service farmers outnumbered the veterans of every other occupation in five chambers.[5] Farmers constituted more than 30 per cent of the six-session membership of four chambers; they comprised more than 30 per cent of the veterans of five chambers.

The advantage which lawyers have because of their number in the membership of the state legislature is heightened in some assemblies by their tendency to return for session after session of service. Whereas lawyers constituted a majority of the six-session membership of not one single chamber, they constituted a clear majority of the veterans in three chambers (Arkansas Senate, Mississippi House and New Jersey Senate). In eight chambers lawyers amounted to more than 40 per cent of the six-session membership; in exactly the same number they constituted more than 40 per cent of those who were serving their fifth or later session. If one checks Tables 1 and 2 by chambers, he will see that lawyers improved their position in fifteen chambers—i. e., in fifteen chambers lawyers constituted a greater proportion of the veterans than of all members. The gains in the fifteen chambers only slightly outweighed the losses in the other nine houses, however, the net averaging only a bit more than one-half of one per cent for the twenty-five houses.

II

At least four facts emerge conspicuously from the mass of data concerning occupations which has been compiled; (1) our bicameral system is not producing senates which differ from the lower houses, so far as means of livelihood of legislators is concerned; (2) the farmer is not, as commonly supposed, in possession of too many seats in legislative chambers; (3) the lawyer is representative for all population groups—our professional representor; and (4) that part of our population which, under any definition, could be called the industrial proletariat enjoys very little membership.

[5] Table 3 shows that farmers and lawyers were evenly matched in number of veterans in the Indiana Senate. Contractors took first place with 23.2 per cent of all members.

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Bicameralism and Occupations of Legislators

Table 2 alone is probably sufficient to convince the reader that the occupational character of the house and senate is essentially the same. This is most conspicuously so in the case of Arkansas where the five most important occupational groups of the House are also, and in the same order, the five most important occupational groups of the Senate. In Mississippi the same five occupations provide the five most important groups in each house, though the order of importance is not the same.

The widest difference in occupational character of the two chambers seems to exist in New Jersey. Even in that state, however, lawyers are of almost equal strength in the two chambers. Four fewer attorneys in the Senate or sixteen more in the House in the six-session period would have made them of almost identical importance. I do not know just what occupational groups are likely to be in alliance, if any such alliances exist in the legislature. None the less, it may be pointed out that a combination of bankers, merchants and manufacturers could control 10 per cent of the New Jersey House and 16.2 per cent of the Senate; and that such a bloc in combination with the lawyers could outvote all other occupational groups in either chamber.

Farmer strength, during the six-session period, was nearly twice as great in the New Jersey Senate as in the House, but this is a fact of little significance since farmers are so small a minority in either chamber (7.3 per cent of the six-session membership of the Senate, entirely missing from that chamber in 1931 and 1935). Any occupational group or groups which might, under the most inclusive classification, be identified as proletarian (laborers, salesmen and clerks, engineers and machinists) whether taken singly or in combinations are of nearly identical strength in the New Jersey House and Senate and taken in their entirety are of little importance numerically in either chamber—5.8 per cent of the six-session House membership; 5.6 per cent of the Senate.

The significance of the foregoing observations as to differences in the occupational content of the two chambers is greatly

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reduced, of course, by the fact that they describe a composite of six sessions. A view into the data for individual sessions of a sample of states, including New Jersey, shows, however, that the foregoing observations are essentially true for individual sessions.

The Farmer

It will be of interest to relate, as far as possible, the actual legislative membership of the various occupational groups to an ideal membership based upon the numerical importance of each group in the whole population of the state. This can be done with some satisfaction for farmers since the magnitude of the farm population reduces the likelihood of important error in the census figures. The other occupational groups differentiated in this study, however, constitute so small a proportion of the states' population that one can put very little confidence in the census figures. In spite of this limitation, however, such calculations have been made for lawyers—because of their numerical importance in legislative assemblies. It may be noted, furthermore, that newspapermen and publishers, bankers and brokers, insurance men, and real estate brokers doubtless hold far more seats in most legislative chambers than their numbers in the whole population would entitle them to.

The prominence of law-trained men and the scarcity of wage-earners in the state legislature will be discussed at length in the course of the next few pages. Attention should be called at this point to the fact that, contrary to the supposition of most writers, the farmer does not enjoy membership in the state legislature greatly out of proportion to his numerical importance in the whole population.[6] It appears that in ten of the twenty-five chambers farmers constituted a higher proportion of the six-session membership than their ratio to the whole

[6] In the following analysis references to the "whole population" are to the gainfully employed population above the age of twenty, and all computations relating to the importance of occupations in the general population are founded on the gainfully employed population above the age of twenty. This rules out any consideration of the unemployed, but that seems inevitable in an analysis of occupational groups, in view of the character of available census data. The unemployed receive attention later in this discussion.

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population would have justified. In at least four of these instances, however, the advantage which the farmer held was so slight that it might well be discounted. In the Indiana House and the Senates of Iowa, New Jersey and Washington, farmers had, during the entire six sessions, from three to six more members than a system of proportional allotment would have given them.

On the other hand, in six chambers (the New York Senate and the lower chambers of Iowa, Maine, Minnesota, New York and Washington) the excess of actual farmer-membership over a membership ideally determined is substantial. Farmers held 290 seats in the Minnesota House during the period 1925 to 1935; on a basis of numerical importance in the whole population they were entitled to 272 seats. The excess, 18 seats, represents 6.6 per cent of the ideal; i. e., 18 is 6.6 per cent of 272. The comparable figure for over-membership of farmers in the remaining five of the six chambers just listed was: Maine House, 15.5; Iowa House, 32.2; Washington House, 51.4; New York Senate, 63.1; and New York House, 94.6.

In the other fifteen chambers the farmer held fewer seats than he would have been allotted under an apportionment based on numerical importance in the whole population. The difference between his actual representation and the ideal (i. e., the deficiency in representation), as measured by percentage of the ideal, ranged from a low of 3.1 per cent in the case of the Iowa Senate to a high of 69.1 per cent in the Arkansas Senate. In eleven of these fifteen chambers the under-representation of the farmer amounted to more than 25 per cent of his proper share on a numerical basis; in five chambers it amounted to more than 50 per cent.

The Lawyer's Prominence

According to the census figures attorneys at law constitute a very small part of the population of any state—ranging, among the states covered in this study, from a low of .24 per cent (24 one-hundredths of 1 per cent) of the gainfully employed population above the age of twenty in Mississippi, to a high of .69 per cent in New York. The median of the thirteen states

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studied was Indiana, where .39 per cent were lawyers. The small magnitude of the figures for lawyer-population and the certainty of error in ascribing occupations to legislators makes generalization as to the relative over-membership of law-trained men very hazardous. Subject to this limitation several observations may be of interest.

If representatives were distributed among the various occupations in strict accordance with their numerical importance in the total population, lawyers would have been entitled, for the entire six-session period, to less than one member in the Senates of Arkansas, Louisiana, Maine, Mississippi, New Jersey and Pennylvania, and they would have been entitled to less than two members in the lower chambers of Arkansas, Louisiana and New Jersey. In only two bodies could the legal profession have laid claim, for a six-session total, to more than four representatives—the Illinois House of Representatives (4.5 members) and the New York House (6.3 members).

The excess of actual lawyer-membership over a true proportional membership for the legal profession may be presented in percentages. Allowing a lawyer for every fraction of an ideal proportional membership (i. e., allowing five lawyer-members instead of 4.5 as ideal membership in the Illinois House) the percentage relation of actual to ideal membership of lawyers ranges from a low of 2,400 per cent in the case of the Washington Senate to a high of 13,500 per cent in the case of the Mississippi Senate (ideal membership, 1; actual membership, 135). The median of the twenty-five chambers studied is the Pennsylvania House where the number of seats actually held by members of the legal profession was 5500 per cent of the maximum number of seats to which their importance in the state's population would have entitled them (ideal membership, 4; actual membership, 220).

If one insists on viewing the excess strength which lawyers enjoy in the state legislature as a usurpation of the rightful membership of other occupational groups, certain other figures will be found of interest. The legal profession was, on a basis of numerical importance in the total population, entitled to a maximum of two seats in the Minnesota Senate; actually there

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were 162 lawyer-members. Lawyers thus had all the places they were entitled to in the upper house of that state and purloined 160 (40 per cent) of the 400 seats which rightfully belonged to other occupational groups. The figure arrived at in this manner—shall we call it the coefficient of thievery?—ranged from a low of 8.6 per cent in the case of the Maine House, to a high of 48.8 per cent in the Arkansas Senate. The median of the coefficients was 32.1 per cent—the Louisiana House.

It must be stated emphatically that this *over-membership* of lawyers in the legislature cannot be viewed as a matter of *over-representation* of the legal profession. The attorney is the accepted agent of all politically effective groups of the American people. As the lawyer is habitually the representative of the grasping and the abused in litigation, as he is increasingly the negotiator between business men with conflicting interests, as he is more and more the spokesman of individual and corporation in public relations—so is the lawyer today depended upon to represent citizens in the lawmaking body.

Reliance upon the lawyer as legislative representative is spread in surprising uniformity among all kinds of constituency. In a previous paragraph some percentages of over-membership of lawyers were presented; the range of excess membership was shown to be from 2,400 per cent in the Washington Senate to 13,500 per cent in the Mississippi Senate. Both Washington and Mississippi are, of course, basically agricultural and rural rather than industrial and urban, yet they represent the extremes in undue presence of lawyers. Of the thirteen states embraced in this study, three (Arkansas, Iowa and Mississippi) may be called strictly agricultural; in each, farmers constitute more than 40 per cent of the gainfully employed adult population. Three other states (New Jersey, New York and Pennsylvania) may be called strictly industrial; in each of them farmers amount to less than 10 per cent of the employed adult population. A study of the percentage of lawyer-excess in these twelve chambers shows that there is no correlation, direct or inverse, between the degree of over-membership of lawyers and the agricultural content of the population.

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The three chambers in which lawyers enjoy, relatively, the least advantage are, in order: Iowa House, Iowa Senate and New York Senate; the three chambers of greatest over-membership of lawyers are, in order: Mississippi Senate, Arkansas Senate and Arkansas House. The lawyer is thus shown to have made both his weakest and his strongest bid for power in states where the farmer is most strongly entrenched.

In order to probe further into the possibility that the lawyer-legislator may breed especially in a certain type of district, districts have been classified according to the urban-rural character of their populations. Four distinct district types were differentiated, which, for further discussion, may best be identified by number, as follows:

Type 1—80 per cent or more of the population of the district lies within a city of one million or more population.

Type 3—80 per cent or more of the population lies within a city or cities of 300,000 to 999,999 population.

Type 5—80 per cent or more of the population lies within a city or cities of 100,000 to 299,999 population.

Type 11—80 per cent or more of the population lies in places of less than five thousand population.[7]

Two or more of these district types were utilized in the selection of representatives to seventeen of the twenty-five chambers for which occupational data were available. These seventeen chambers are incorporated in Table 4 which shows for each of these district-types what percentage of their representatives in the legislature were members of the legal profession. The variance in the tendency to send lawyers ranges between the ultimate possible extremes—all of the members in the New York Senate from district-type 5 (dominated by such cities as Albany, Syracuse and Yonkers) were lawyers; none of the members in the New York House from district-type 11 (strictly rural) were lawyers.

[7] The peculiar numbering (1, 3, 5, 11) is due to the fact that districts were grouped into twelve classes on an urban-rural basis, only four of which are believed to be significant for the present analysis. The numbers used here are consistent with those which will be used to refer to the urban-rural character of districts in forthcoming studies.

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TABLE 4

SHOWING, BY CHAMBERS, PERCENTAGE RELATION OF LAWYER-REPRESENTATIVES TO ALL REPRESENTATIVES SENT BY VARIOUS TYPES OF DISTRICT, CLASSIFIED ON AN URBAN-RURAL BASIS

State and Chamber	Urban-Rural Character of District				
	Type 1	Type 3	Type 5	Type 11	All Districts
California					
House	22.2	51.8	59.1	32.4	34.3
Illinois					
House	31.2			23.9	29.7
Senate	24.2			46.7	32.7
Indiana					
House		36.5		19.7	23.5
Senate		52.8		19.2	34.3
Louisiana					
House		42.3		25.6	32.4
Senate		51.9		26.9	46.5
Minnesota					
House		47.7	33.3	7.1	18.1
Senate		62.5	60.0	29.7	40.3
New Jersey					
House			33.3	16.7	42.0
Senate			50.0	55.6	45.9
New York					
House	62.6	42.3	51.6	0.0	43.9
Senate	49.2	53.3	100.0	33.3	46.1
Pennsylvania					
House	23.9	16.1	14.3	12.6	17.7
Senate	47.8	12.5		18.8	33.0
Washington					
House		26.1	29.5	8.3	14.8
Senate		57.9	47.1	6.0	18.4

It is hard to find in Table 4 any evidence of an established relationship between degree of urbanization and tendency to send lawyers to the legislature. In the case of thirteen chambers, the strictly rural districts (Type 11) included a smaller percentage of lawyers in their delegations than did districts of any other type. On the other hand, there were two chambers (Senates of Illinois and New Jersey) whose rural delegations contained a higher proportion of lawyers than did the delegations sent by the cities. If the forty-seven figures which are entered under the district-type headings (exclude the figures for "all districts") are arranged in order from the smallest to the largest (i. e., from 0. to 100.), it will be found that seven of the ten smallest figures represent the strictly rural districts

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(district-type 11) and that only one of the ten largest figures represents the strictly rural, or district-type 11. Fourteen of the seventeen figures which represent district-type 11 fall below the median figure. On the other hand, four of the figures for the strictly metropolitan districts (district-type 1) fall below the median, as compared with three which appear above. Cities from 100,000 to 999,999 are definitely lawyer-inclined. Only three of the figures for these types of district (district-types 3 and 5) appear among the ten smallest figures; eight appear among the ten largest figures. Five of the twenty-three figures for districts of these types fall below the median; sixteen lie above the median; two are tied with a rural figure for the median position.

It is frequently suggested that the lawyer-legislator is not really a practitioner at law, or, if he is, not a very good one, and, therefore, that figures such as I have given greatly overstate the importance of the lawyer-mind in the legislative assembly. This conclusion seems not to be justified. The members of five senates and six lower houses who, in the 1934 or 1935 session, identified themselves as lawyers or attorneys were checked against the listings in *The Martindale-Hubbell Law Directory,* 1936 edition.[8] Of 205 house members who called themselves lawyers, 149 (72.7 per cent) were listed in the legal directory as practicing lawyers; 65 of 78 senators (83.3 per cent) were listed; and 214 of the 283 (75.6 per cent) lawyer-members of the houses and senates combined were found in the *Directory.* Considering that the *Directory* presumably omits some bona fide lawyers and that many lawyer-legislators were difficult to locate in the volume because of uncertainty as to

[8] Published by Martindale-Hubbel, Inc., New York City. The six lower chambers selected are those of California, Illinois, Iowa, Louisiana, New York and Pennsylvania; the five senates are those of the same states, excepting California for which senate occupations are unknown.

Only attorneys who have been in practice at least ten years can get a rating of "very high" in the *Directory,* and only those who have been in practice at least five years can get a rating of "high". An effort was made to check the members of certain 1925 sessions in the 1936 *Directory* to see how many lawyer-members subsequently achieved a "high" or "very high" rating, but this proved not feasible because of changes in address which made checking extremely difficult.

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their business addresses, it seems fair to say that nearly all lawmakers who call themselves lawyers have adequate justification for doing so.

It also seems necessary to conclude that the lawyers who get elected to the legislatures are on the whole respectable members of the legal profession. Of ten Iowa senators, 1935 session, who identified themselves as attorneys, nine were listed in the *Law Directory*; of these nine, five were rated "very high" as to legal ability; two others were rated "high", and the remaining two were rated "fair". No other chamber fared so well, though the Pennsylvania Senate approached this record.

TABLE 5

COMPARISON, AS TO LEGAL ABILITY, OF 149 REPRESENTATIVES AND 65 SENATORS WHO WERE LISTED IN THE *Law Directory* WITH 200 SYRACUSE AND 200 IOWA ATTORNEYS

	Number of Lawyers	Percentage rated				Percentage given no rating
		Very high	High	Fair	Total rated	
Members of six lower chambers	149	14.1	21.5	12.1	47.7	52.3
Members of five senates	65	40.0	16.9	12.3	69.2	30.8
Members of eleven chambers	214	22.0	20.1	12.1	54.2	45.8
Syracuse attorneys	200	14.5	7.0	10.5	32.0	68.0
Iowa attorneys	200	29.5	25.0	10.5	65.0	35.0
Syracuse and Iowa attorneys	400	22.0	16.0	10.5	48.5	51.5

Table 5 compares 149 house members and 65 senators (lawyer-members of six lower chambers and five senates in 1934 or 1935) with 200 practicing attorneys in Syracuse, New York, and 200 picked at random from Iowa cities of less than 15,000 population. This table seems to establish the lawyer in the legislature as a shade better than the members of this profession at large.

The Worker Class in the Legislature

The over-abundance of law-trained men in the state legislature is intimately associated with another fact which, as pointed out above, emerges conspicuously from the quantitative data

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on which this study is based—namely, the absence from the legislature of any substantial number of persons who can be identified as belonging to the proletariat.[9]

By no stretch of the imagination can it be said that a propertyless worker-unemployed class is occupying seats in the legislature in keeping with its numerical importance in the whole population. If, giving that class a most inclusive definition, we assume that all legislators who declared themselves to be laborers, engineers, machinists, salesmen, or clerks belong to the worker class, we find a maximum of less than 1000 legislators, out of a total of nearly 13,000 members in the six sessions of the twenty-five chambers, who can be identified with the proletariat. At their greatest strength in the Pennsylvania House of 1935, they would have enjoyed 26.1 per cent of the voting power if they had stood together; in the chamber across the hall, however, their combined strength in that session would have equaled only 10 per cent of the total membership. In no other state could the proletariat, as above liberally defined, marshall anything like the strength which they enjoyed during the six-session period in Pennsylvania. In New Jersey, for instance, they constituted 5.8 per cent of the six-session membership of the House and 5.6 per cent of the Senate. In New York the comparable figures were 5.4 per cent for the House and 2 per cent for the Senate. This propertyless class was without so much as one member in the New York Senate of 1927 or 1929 or in either chamber of the New Jersey legislature of 1935. At no time during the six sessions did any member of the upper chambers of New Jersey or New York identify himself as any sort of manual laborer, other than what I have classified as " engineer or machinist ".

Those interested in speculating on the likelihood that propertyless people will in the immediate future pave their way to power by conquests of state legislative positions will be interested to learn that the New Deal overturn seems to have worked

[9] Efforts to obtain data as to income of legislators from federal and state income tax authorities failed. The statements of occupation by legislators supply the crudest sort of basis for estimating the numerical importance of workers in the legislature, yet that is the information relied on in this study.

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no appreciable advantage to the propertyless worker-unemployed class, so far as possession of legislative seats is concerned. The personnel of seven lower chambers was checked in order to compare the occupational membership of the sessions of 1925, 1927 and 1929 (pre-landslide) with that of the sessions of 1933 and 1935 (post-landslide). Each major occupational group maintained or increased its relative strength in one or more chambers, but suffered substantial losses in others. There is no basis for saying that, on the whole, one occupational group or class gained or lost in number of seats as a result of the landslide.

III

The Significance of the Occupational Distribution of Legislators

Throughout this discussion I have tried to avoid any suggestion that the *representation* which any class or part of society enjoys is measured by its *membership*—the number of seats—which it possesses in the legislature. Mr. A. N. Holcombe seems to me to fall into error on this point. He estimates the proportion of the American people which falls into each of the seven great economic classes which Bukharin identified: proletariat, capitalists, landlords, intermediate, transitional, mixed, unclassified. In answer to the question, "Which classes gain most from the normal operation of the American representative system?", Mr. Holcombe says: "It is possible to make a rough classification of the Federal Senators and Representatives upon the same basis as that adopted for the classification of the people at large. Such a classification should make it easier to answer the question, which classes are in a position to gain the most power under the American system of government?" Lawyers, together with "the whole intermediate class," he says, "are very greatly over-represented." [10]

Bukharin's classification of society may be valid for purposes of Marxist doctrine; it seems to me that it has only a very limited usefulness for contemporary analysis of legislative bodies.

[10] A. N. Holcombe, *Government in a Planned Democracy* (New York, 1934), pp. 44 *et seq.* *Cf.* Holcombe, *The New Party Politics* (New York, 1933).

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It may well be that when the social classes which Marx envisaged and Bukharin attempted to identify are forced into cleavage by the class struggle, spokesmanship for the different classes will be accurately measured by their numbers in the forum. But it should not be supposed that effective representation of the capitalist or the landowning class at the present time is in any sense measured by the relative numbers of capitalists and landowners in the legislature—which, I understand, is what Mr. Holcombe does suppose. Undoubtedly in the American political arena today the lawyer, the real estate broker, and the tenant farmer speak quite as confidently in the interest of a capitalist and a profit system as do those who, according to Marx, monopolize the advantages of that system. The *over-membership* of the "intermediate class", including lawyers, is our way of accomplishing the *over-representation* of the bourgeois classes, *grande* and *petite*.

The task of devising a representative system for legislative assemblies as practiced in the modern world is not simply one of assuring spokesmen, directly or indirectly, for all classes of people or for all identities of interest. The task is, perhaps fully as much, one of making sure that the demands of certain groups will be submerged in the general public. I am not clear as to why the territorial or geographical constituency was originally established as our basic unit for representation. At least one of the reasons for our refusal to abandon territorial representation in favor of some form of economic or functional representation seems, on the other hand, to be pretty obvious—we are not willing to abandon our traditional symbol of equal representation for all; at the same time we are not willing to permit a propertyless worker-unemployed group to have places, proportionate to their numbers, in our policy-making bodies. The use of territorial constituencies has at least up to now permitted us to maintain capitalist-middle class control without avowedly violating the principle that, within the limits of enfranchisement, a man biologic is a man politic.

Discussion of alternatives to territorial constituencies seems to have centered upon one or the other of two possibilities: representatives might be allocated to people according to their

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economic status (landowners, industrial entrepreneurs, wage-earners), or representatives might be apportioned to people according to their societal function (bankers, farmers, coal miners).[11] If the first of these alternatives were adopted, if representatives were apportioned according to economic status, then surely little likelihood of retaining our symbol and at the same time maintaining our present class supremacy would exist. Mr. A. N. Holcombe, accepting Bukharin's classification, estimates that 51.7 per cent of our national adult population is of the proletariat. To allocate over 50 per cent, or even a much smaller proportion, of our congressional or state legislative seats to the propertyless worker-unemployed class is surely to invite that part of our population to take over not only our political system, but, through their control of political power, to take over the economic system as well.

It is not so clear what would be the effect on our present distribution of power between classes if representatives were allotted according to societal function (distinguished from economic status). Perhaps the aspirations of caretakers and charwomen who work in bank buildings could be smothered by declaring them to be bankers and thereby subordinating them to the greater voting power of the bond salesmen and customer's men who mistake themselves for captains of finance. On the other hand, if the janitor at the bank is thrown into a common constituency with all other caretakers, or cast into a more inclusive soviet of skilled or unskilled workers, he is in either event invited to send representatives to the legislature who are uncompromising in their spokesmanship and maneuvering for the advantage of a worker class.

It is not to be supposed that the adjustment of the legislative constituency to either economic status or societal function will accomplish the immediate surrender of the class or classes

[11] "The term functional representation is used in political science to describe the representation of specific economic groups, such as the workers or the employers in particular industries or both workers and employers together, the members of a profession and so forth. It must be distinguished from representation by class or rank or wealth, although in some cases the two groups may coincide." W. A. Robson, "Functional Representation", in *Encyclopaedia of the Social Sciences*, vol. 5, p. 518.

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which control the newspapers, write the public school curricula, and in other ways make attitudes what they are. Whether or not those who are now in power could, through some equivalent of gerrymandering and through the manufacture and manipulation of attitudes, maintain their position under an alternative system of representation, it is poor politics to give an inch to a man or to a group who will bend every effort to convert it into a mile.

The moral to this tale is that those who desire the perpetuation of bourgeois control in American legislative assemblies will do well to defend the use of geographic constituencies; and, no doubt, they will be well advised to resign themselves to farmers and lawyers as their representatives. Where, indeed, are the American capitalist and middle classes to find more effective spokesmen than in the individualistic, tradition-bound farmer and the fee-taking lawyer?

A great deal has been said about the "unfortunate consequences of farmer-dominated legislatures." Those who deplore the numerical importance of farmers in the legislature usually betray a confusion of *membership* with *representation*. Undoubtedly the city man has ample reason to bewail the existence of apportionments unduly limiting the number of representatives which urban centers may send to the legislature. But the over-representation of rural areas is not the same thing as "too many farmers". If apportionment were fairly handled—let us say, if one-member districts of equal population were laid out without conscious effort to discriminate for or against the city—farmers would dominate the voting in a very high percentage of districts and it is unlikely that the farmer contingent in the legislature would be materially reduced in more than a half dozen of our state legislatures.

The Lawyer as Lawmaker

It is popular also to decry the prominence of the lawyer in our lawmaking bodies. The lawyer, it is said, has his nose buried so deeply in the past that he cannot elevate his eyes sufficiently for a good look at the present. "It is almost an inevitable characteristic of the legal mind", says Harold Laski,

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> that it should tend to conservatism. It is largely engaged in the study of precedent. What it can do is most often set by the statutes of a preceding generation. Its chief exponents are, as a rule, men already well past middle age who come to positions of authority just when new wants they have not known are coming to be expressed. Lawyers, in fact, are more definitely the servants of tradition than any other class in the community; for the demonstration that novelty is desirable is, with them, more difficult, because more impalpable, than with any other aspect of social life.[12]

Mr. Laski does not say specifically that these thought and habit patterns beset the lawyer while he is acting in a lawmaking capacity, but the context in which the statement appears testifies to a belief that they do. Mr. Brooke Graves, now rising to prominence in the American literature of politics, says that just such a character as Mr. Laski ascribes to the legal mind is "significant because it constitutes a considerable part of the explanation of the fact that it is difficult to secure the passage, by our state legislatures, of liberal measures of a social or economic character." [13]

Nowhere in the literature of the subject do I find any *evidence* to support the supposition that law practitioners, when considering legislation, are bound up by a precedent-mongering habit. No doubt the attorney meets many of his problems of counseling clients in the state of mind which Mr. Laski ascribes to the lawyer in the above quotation. But to say that lawyers, when counseling clients, must constantly keep in mind the rules under which men's actions will be judged if they come to litigation surely constitutes no strong reason for saying that when they are in a position to change the rules lawyers can act only to confirm the existing understandings. If the lawyer transfers his client-advising and court-arguing ways to the legislative assembly, must it not be supposed that the same state of mind rules him when acting as a functionary in that other great policy-making institution, the family? Will it be said that when the lawyer is admonishing his children he shows especial

[12] H. J. Laski, *A Grammar of Politics* (New Haven, 1925), p. 572.

[13] W. B. Graves, *American State Government* (New York, 1936), p. 182.

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tendency to harken back to ancestral ways—that lawyers above other people are prone to say, "Your grandfather would not permit me to shoot firecrackers in the living room; let the decision stand."

If lawyers reckon from existing understandings in advising clients, so also they advise clients as to possible interpretations of the law which will permit the action which the client wishes to take. Indeed it might be said that the more prosperous practitioners of law specialize in avoidance of understandings. Might we not say then that lawyers make our most progressive legislators because they are practiced in studying how old rules might yield to new for the benefit of present and future generations? It is said that lawyers rank next to engineers in their ability to win high executive positions in business corporations. Is this because lawyers demonstrate a tendency to paralyze action or is it possibly because business men have found that lawyers are facile in devising and executing programs of action?

If lawyers carry their professional thought and habit patterns into the legislative assembly, do other occupational groups do likewise? Are farmers, as legislators, inclined to plant small seeds and husband them into flowering social institutions? And if so, do they insist that the fruit be ready for harvest within a foreseeable time? Does the architect, in the legislature, demonstrate richness in capacity for planning social institutions? Does the taxi driver, when making laws, forge straight to his objective, looking neither to left nor to right? Are preachers useless above all men because their learning is in the ways of ancient Judea and Israel and their professional concern is for a life where statutes of limitation can have no effect?

The foregoing paragraphs may clear the lawyer-legislator of the charge of precedent-mongering, but still leave him indicted as a chief opponent of legislative change. Any individual lawmaker can be expected to defend his personal interests against legislative attack, and members of any occupational group can be expected to stand side by side in opposition to measures adverse to their common interests. Doctors furnish the principal resistance to socialization of medicine; insurance

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men are ever ready to protect the stake of widows and orphans in insurance policies. Quite naturally lawyer-members of the legislature are constantly on watch to protect the lawyers' interest in the law.

But the stake of the legal profession in the existing law is nearly all-embracing. Law is the material with which the lawyer works, as clay is the medium of the sculptor, and religion the stock-in-trade of the preacher. Every proposed enactment is a challenge to the attorney serving in the legislature. If it alters an important relationship, he may have to reassociate a great body of knowledge; if it alters an important procedure, his skill may be rendered obsolete.

Impelled by this catholicity of self-interest and fortified by numbers, the lawyer group in the legislature stands as a potential obstruction to every statutory innovation. The force of this resistance has never been objectively measured; my own observations suggest that the literature greatly overstates its importance.

IV

The basic data of this article are descriptive of twelve state senates and thirteen lower chambers. It is improbable that the story would change greatly if it were extended to embrace all of the American state assemblies. But the account, even for the twenty-five chambers examined, is only a partial one. The fate of a very large proportion of proposed legislation is determined by the action of the reporting committee. Perhaps lawyers monopolize the committees on the judiciary and the criminal code, and thereby lay a withering hand on legislation which would alter the organization and procedure of courts, and the substantive and adjective law of crimes. Perhaps farmers, by holding all appointments to the committees on agriculture, really write the agricultural law of the forty-eight states. An extension of the investigative method used for this article would reveal the truth or fallacy of such suppositions.

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CONSTITUTIONAL CHANGES IN YUGOSLAVIA

I

FROM December 1, 1918, when Yugoslavia was formally organized as a separate state, to August 26, 1939, the date of the enactment of its present constitutional arrangement, it was ruled under no less than six different constitutions. Its governmental system, which could be described as a decentralized parliamentary monarchy in 1918, became a centralistic parliamentarism (in June 1921), culminating in a royal dictatorship in 1929. This, in turn, gave way to a constitutional monarchy, first under King Alexander (September 1932-October 1934) and then under a Regency (October 1934), which developed finally into a constitutional monarchy with a "*corpus separatum*", the autonomous *Banovina* Croatia (August 1939).

Such rapid constitutional change, first toward an extreme centralization and the limitation of personal and political liberties, and then again toward federalism and constitutional safeguards, indicates the political instability of the country and the underlying cultural and ideological conflicts of which the constitutional forms were only a reflection. The purpose of this article is to examine these cultural and ideological backgrounds of constitutional change in Yugoslavia and to suggest the possibility of further constitutional development.

There have been two conflicting theories underlying the drafting of the various constitutions: one based on the assumption that the formation of Yugoslavia was merely the result of Serbia's military achievements, and the other placing emphasis on the rôle of non-Serb groups, primarily of Croatians, in preparing for the creation of a common state of all South Slavs. The predominance of the first theory meant the accentuation of a centralistic trend, while ascendancy of the other meant a tendency toward federalism.

The idea that Yugoslavia is the outcome of a military conquest, an enlarged Serbia, was not born merely in the minds

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of a few Serb intellectuals and theoreticians but was rather imbedded in the thoughts and implanted in the culture of the whole Serb nation; it formed a part of their educational, political and cultural heritage. The idea of military conquest and of power based on that conquest was a dominating factor in Serbia's political history, and its development can be traced through the formation and composition of the ruling strata both in medieval and in modern Serbia.

II

The migration of Slav agricultural groups into the Balkan peninsula, formerly settled by Romanized pastoral tribes of paleo-Balkanic origin, brought into the Balkans a cultural dualism which for centuries affected the political history of the Balkan people, is felt today in the relations between Croatians and Serbs, and finds its reflection in Yugoslavia's changing constitutions.[1]

In the course of centuries the immigrating Slav agriculturists imposed their language on a great part of the Balkan herdsmen, though these herdsmen not only retained their own economic, social and political organization, but in an age-long struggle tended with some success to impose their rule and their ways of living on the more compact but less mobile agriculturists.

The form of social organization of the Balkan pastoral peoples which had a special significance for their constitutional development was the patriarchal joint-family system with a pronounced power of the family head over the rest of the family members, a sharp social differentiation based on wealth, inherited rights and military achievements, and finally a tendency to engage in plunder, warfare and commercial activities in order to dominate economically and politically the neighboring agricultural population.

In so far as pastoral tribes or peoples in the Balkans succeeded in imposing their rule and in forming political communities, the resulting constitutions reflected these strong

[1] Dinko Tomašić, *Politička misao u Srbiji, Mjesečnik, svibanj-lipanj* (Zagreb, 1939).

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traits of patriarchism, aristocratism and militarism in spirit and practice, if not always in the actual wording of the constitutions. Balkan states were often *actually* organized on the idea of the state being a joint-family ruled by the king as an autocratic patriarch, on the basis of the differences in the rights and duties between the dominant and subjected groups within the state, and finally on the outstanding prestige of the military class and its influence on both the internal and foreign policy of the state.[2]

Modern Serbia arose toward the end of the eighteenth century, when migrating pastoral tribes from the Dinaric mountains settled the territory along the Morava river and engaged in plunder, guerilla warfare and trade between the two bordering empires, Ottoman and Austrian. The strategic position between these two empires enabled some local chiefs, who controlled bands of *hajduci*[3] and also the local hog, sheep and cattle trade, to rise in importance and to take advantage of the rivalries of bordering Powers and the friendship of Russia in winning political independence. That independence was guaranteed by the Western Powers at the Congress of Berlin in 1878.

All the political history of modern Serbia has been dominated by the traits and tendencies of its founders: by the autocratic rule of monarchs, by frequent uprisings of a military character, by wars and territorial expansion, and by chronic constitutional crises provoked by constant strife between autocratic rulers, pretenders to the throne, miliary cliques, and a small liberal intelligentsia educated at Western universities and endeavoring to introduce into Serbia the democratic institutions of Western civilization.

III

The formation of Yugoslavia was the result of the expansionistic tendencies of Serbia and of the anti-Austrian propaganda of Austrian Slavs seeking to liberate themselves from Austrian rule and to form an independent state on

[2] Dinko Tomašić, *Društveni razvitak Hrvata* (Zagreb, 1937), chs. v, vii.

[3] Mountain brigands.

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principles of national self-determination and democracy. The Corfu Declaration of July 1917, drafted by representatives of the Serbs, Croatians and Slovenes, provided that the future state should be "free, independent, constitutional, democratic and parliamentary," that "any one-sided solution of national liberation and unification shall be excluded," and that therefore the constitution of the new state should be voted in a constituent assembly and by a "qualified majority of representatives."[4] Croatians and Slovenes interpreted the last phrase to mean a majority which would eliminate the possibility of Serbs, who were numerically stronger, dictating the constitution to Croatians, Slovenes and other non-Serb peoples and imposing a Serb hegemony over them.

Following the débâcle of the Central Powers and the armistice of 1918, the Serb army without any opposition took possession of Croatian and Slovene territory, while Croatian and Slovene military units as parts of the Austro-Hungarian army were disbanded by the Croatian and Slovene authorities without being replaced by a new military formation under their control. This situation made Serbia virtually the master of the new political union, but there remained a faint hope that fairness would guide those who held power in Belgrade so that the new constitution would be based on the ideas of the Corfu Declaration, providing for the whole-hearted collaboration of Croatians, Slovenes and other non-Serb peoples on a basis of equality of rights and duties.

This, however, did not happen, and after a short period of liberal rule based on administrative methods inherited from Austria-Hungary, the ruling group of Serbia, flushed with victory and conscious of its military strength, imposed on the rest of the country a constitution which provided for a strongly centralistic state, leaving the power concentrated completely in the hands of the king supported by the ultra-nationalistic and conservative Radical Party of Serbia whose goal was to create a "Great Serbia", regardless of the national, cultural and political aspirations of non-Serb peoples within the new

[4] F. Šišić, *Dokumenti o postanku Države SHS* (Zagreb, 1920).

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state. The formal wording of the constitution was such as to make a superficial observer believe that Yugoslavia was a parliamentary monarchy, governed democratically by a body of national representatives elected by direct, secret and universal suffrage, but the numerical majority of Serbs in the state, the electoral practices of the Radical Party, the pressure of military circles, and the strong tradition of power concentrated in the hands of the king made any free play of parliamentary forces impossible.

Croatian representatives at first refused to collaborate with Serbs under such a constitution, and they led an extra-parliamentary fight to make the Croatian question an international issue, but when this failed, due to the support Serbian politicians had from England and France, Croatians decided to recognize the monarchy and the constitution and to start in the Belgrade parliament a legal fight for amendment of the constitution. There, owing to the internal strife between Serb political parties, Croatians did succeed in organizing a bloc of parties of the opposition. This bloc was numerically so strong that, in a true parliamentary régime, it would have replaced the ruling party and made constitutional changes through normal constitutional procedure. The strength of this bloc, however, meant a threat to the hitherto unchallenged power of the ruling group of Serbia, and this group protected its privileged position by fatally shooting the leaders of the Croatian representatives in the midst of the Belgrade parliament, by dissolving the parliament, abolishing the parliamentary régime and establishing a royal dictatorship. The post of prime minister in the dictatorial cabinet and a few other key executive positions were taken by army generals, and an "iron hand" rule was inaugurated to the accompaniment of trials, prison sentences and executions.

This solution of the constitutional crisis by means of force and violence was only to be expected from a ruling group trained in a tradition of heroism, blood feuds, conspiracy, uprisings and coups d'état, a tradition which excluded compromise. For the "victory intoxicated" ruling group of Serbia to give in to the demands of Croatia would have been

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the same thing as a defeat on the battlefield; it would have hurt Serb national pride and would have meant a blow to the prestige of the ruling class. Moreover, an equal share in political power for Croatians, Roman Catholic by faith, long under the cultural influence of Austria and living on a higher economic level, would have been a threat to the cultural and economic values of Serbia as expressed in its heroic popular ballads, in its Serb-Orthodox Church, and in the idea of a "Great Serbia", symbols which meant political, cultural and economic domination of the Balkans.

IV

The formation of the Croatian medieval state, like most Balkan political communities, had been the work of pastoral nomads and warlike tribes who imposed themselves on the agricultural peoples with the help of both Byzantium and papal Rome, which used these vassal states as tools for their own political purposes. The Croatian medieval state, then, was destined to succumb to the plans of the Vatican, which considered the interests of Catholicism at the doors of the East better safeguarded if entrusted to the hands of Hungary. That is how Croatia became a part of the Hungarian kingdom and later a part of Austria-Hungary.[5]

This event, however, meant not only a constitutional change for Croatia; it meant also deep cultural changes within the social structure of Croatia. From the Dinaric mountains along the eastern Adriatic, the center of Croatia's political and cultural life moved into the Pannonian basin between the Drava and Sava rivers; from an area of nomadic pastoral life, blood feuds, clan and tribal rivalries, it passed into an area of settled agriculturists, immobile, regionally conscious, organized in the *zadruga* (a self-sufficient economic unit, composed of groups of families which lived in common households and on collective properties, ruled democratically by elected representatives), and interested only in defending their lands and forests, their

[5] Marko Kostrenčić, *Hrvatska pravna povijest* (Zagreb, 1930), ch. i.

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"old rights", against an encroaching nobility created by Hungarian kings.[6]

For centuries these peasants fought the impositions of the upper classes, clergy, lay nobility and bourgeoisie; and this age-long struggle found its final expression in the peasant movement of Croatia, which in the course of the last decade has taken in its hands complete control of the political life of the Croatian people.[7] The basic philosophy of this movement envisaged a "peasant state" organized on the pattern of the old agricultural *zadruga* community, ruled by the peasants and leading finally into an all-human republic, a world government composed of equal representatives of all peoples endowed with sovereign powers and based on an initiative which would emanate from the people and would direct those entrusted with governmental functions.[8]

The ideology of the Peasant Party, however, was opposed by a group of Croatian intelligentsia originating in the Croatian pastoral area in the Dinaric mountains, where the heroic tradition, blood feuds and almost daily violent clashes among the herdsmen formed the background of a generation of lawyers, journalists, priests and other learned professionals. In this area religious consciousness was more developed than national conciousness, and national consciousness itself had a religious basis, wherefrom arose a deeply-rooted distrust, antagonism and hatred of Orthodox Serbs, and a tendency for a political orientation toward Fascist Italy and Nazi Germany. The intellectuals from this area either entered the ranks of the Peasant Party of Croatia or formed separate political groups, but in either case they undertook to impose on Croatia their conceptions and their political methods and attitudes which were completely strange to the political philosophy based on *zadruga* culture. A part of this group emigrated to Italy, Germany and Hungary, sponsoring methods of violence as the

[6] Dinko Tomašić, *Politički razvitak Hrvata* (Zagreb, 1938), ch. ii.

[7] Dinko Tomašić, "Peasants and Propaganda in Croatia", *The Public Opinion Quarterly*, July 1937.

[8] Rudolf Herceg, *Pangea* (Zagreb, 1932); Antun Radić, *Sabrana djela* (Zagreb, 1932-8), Vols. I–XVIII.

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only possible way of opposing Serb rule and of emancipating Croatia from Serbia. Together with Macedonian revolutionaries they organized bombings, uprisings and conspiracies which finally resulted in the assassination of King Alexander in Marseilles, in October 1934.

V

The assassination of King Alexander was a turning point in the constitutional history of Yugoslavia because of a significant change in the composition of the ruling group of Yugoslavia after Alexander's death. Alexander's cousin, Prince Paul, educated at Oxford, England, and having little in common with Serb political tradition, except the notion that power in Serbia was always vested in the Crown, took power into his own hands, limited the influence of army generals and surrounded himself with a group of advisers from the business and intellectual world. He came into personal contact with Dr. Maček, leader of the Croatian Peasant Party, and discussed with him the terms of a new constitutional order for Yugoslavia.

In the meantime there were two attempts to prevent any possible arrangements between Prince Paul and Dr. Maček. Two premiers after Alexander's death, Jeftić and Stojadinović, attempted to introduce a fascist régime into the country, and this would have been a new form through which the old ruling group of Serbia might regain its former power and influence. The attempt of Premier Stojadinović was especially dangerous because it was backed by Italy and Germany. But the possibility of an imminent war after the Czechoslovakian crisis, the result of the elections which showed the weakness of Stojadinović's régime, and the desire to have Yugoslavia on the side of the Allies induced the Paris and London governments to exert pressure on the Belgrade government to come to an agreement with the Croatians. Out of this arose the new constitutional arrangement of August 1939, based on the Constitution of September 3, 1931.

The Constitution, proclaimed on September 3, 1931, provides for a bicameral national legislature, consisting of a Chamber

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of Deputies (*Skupština*) elected by the people, with general, equal and direct vote (though voting is public and oral), and a Senate. An electoral law of 1931 assigned two thirds of the seats in the *Skupština* to the party polling the largest number of votes. Each party to present candidates must find support in all administrative provinces of the state. This system was designed to break all party affiliations based on distinct ethnic, cultural or provincial interests and to form a strong governmental party which would cut across historical and traditional boundaries. With the same aim the old provinces were abolished, and Yugoslavia was divided into nine *banovine*, administrative provinces with very restricted functions and based on river basins. The Senate is evenly divided between members nominated by the king and those elected indirectly.

The electoral law of 1931, combined with the use of police pressure and administrative tricks, made it possible to bring into both houses an overwhelming majority of "yes-men". Besides, this "National Representation" served more as a formality than anything else, because legislative initiative according to constitutional practice is in the hands of the ministers who are responsible only to the king. The king is empowered to take exceptional measures at any time, the cabinet acting under his direction and being dependent only upon him. The king has the right to dissolve the National Assembly and to proclaim new elections. Deputies do not enjoy parliamentary immunity.

When elections were held under the electoral law of 1931, during King Alexander's reign, the opposition abstained, but under the more liberal rule of Prince Paul, the opposition participated in the elections and only abstained from coöperating in the *Skupština* and Senate. At the last election of December 11, 1938, held by Premier Stojadinović, 41 per cent of the votes were for the opposition and 59 per cent for the government; and this was generally considered a defeat for the government which had used police pressure on Serb peasants, state employees and national minorities in order to obtain a majority.

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It was a difficult task under the Constitution of 1931 to satisfy Croatian demands for autonomy, democracy and parliamentarism. Prince Paul was not willing to modify it, but insisted that Croatians take part in the government under that constitution. Finally on August 26, 1939, an agreement was reached on the basis of which Croatia was organized as a separate entity with its own constitution, while the Constitution of 1931 remained in power for the rest of the country and for Croatia in certain relations with the central government. This formula was developed after the pattern of Croatia's previous status in Austria-Hungary, when it had been organized as a separate entity within the Hungarian part of the Dual Monarchy. The autonomy which Croatia enjoys under this arrangement in Yugoslavia, both formally and actually, is greater than that which it had in Austria-Hungary.

On the basis of the new constitutional arrangement, Croatia is a self-governing *banovina,* a territorial unit with legislative, executive and judicial powers on a territory of 66,393 square kilometers [9] with a population of 4,500,000, which forms 28.6 per cent of the population of Yugoslavia and 26.8 per cent of its territory.[10] According to the wording of this arrangement, Croatia is ruled jointly by the king and the *Sabor,* the Croatian house of representatives, elected "by the people in free, universal, equal, direct and secret voting with the representation of minorities." [11] Members of the *Sabor* enjoy parliamentary immunity. The *Sabor* holds legislative powers for the Croatian territory in all matters with the exception of foreign affairs, military affairs, religion, post, telegraph and telephone, railroad, international and interstate commerce, customs, and the "care for the safety of the state." But even some or a part of these affairs may be transferred to the *Banovina* Croatia by the decision of the central government.[12]

[9] Uredba o Banovini Hrvatskoj, Čl. 1, *Narodne Novine,* Zagreb, August 30, 1939.

[10] According to the statistics of *Gospodarska Sloga,* the Peasant Party's economic organization.

[11] Uredba, Čl. 6.

[12] *Ibid.,* Čl. 2.

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The king rules in Croatia through the person of the *ban,* who is responsible only to the king and to the *Sabor.*[13] He is therefore appointed in accordance with parliamentary principles by the king after consultation with the president of the *Sabor.*[14] Concentrated in the *ban's* hands is all executive power in the *banovina,*[15] and conflicts of competence between *banovina* and state authorities will be solved by a constitutional court, which also decides on the constitutionality of *banovina* laws.[16]

The judicial affairs of the *Banovina* Croatia are controlled by autonomous courts for civil, criminal and administrative affairs.[17] Croatia also has its financial autonomy, that is, independent resources necessary to cover its administrative, cultural and economic needs.[18] Control of the manipulation of income and expenditure is vested in a separate financial court of the *Banovina* Croatia, which forms a part of Croatia's autonomous administration.[19] Croatia also has the right to confer citizenship.[20]

As a part of Austria-Hungary, Croatia did not enjoy financial autonomy and was completely at the mercy of Hungarian economic policy, which often imposed taxes contrary to Croatia's economic interests. Also the position of the Croatian *ban* was different in Austria-Hungary, where he was subjected not only to the king but also to the president of the central government, not now the case.

Regardless of the formal wording of the recent constitutional arrangement, Croatia's position within Yugoslavia is actually much stronger than it was within Austria-Hungary because of the difference in the relative strength of political forces in the two periods. In Austria-Hungary, Croatia was at a great disadvantage, both economically and politically, in its relations with the two dominant peoples: Austrian Germans

[13] *Ibid.,* Čl. 5, 8, 9.

[14] According to the interpretation of the constitutional arrangement in the leading circles of the Peasant Party.

[15] Uredba, Čl. 4.

[16] *Ibid.,* Čl. 13.

[17] *Ibid.,* Čl. 4, 11.

[18] *Ibid.,* Čl. 3.

[19] *Ibid.,* Čl. 11.

[20] *Ibid.,* Čl. 2.

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and Hungarians. In comparison with the industrialized parts of former Austria-Hungary, Croatia was a backward agricultural region and was numerically and territorially too small a part of the Empire to exert any significant political pressure on the ruling groups. It tried to play the balance between the two dominant races, but as a rule these two would adjust their differences at the expense of Croatia. It was for these reasons that Croatians fought to emancipate themselves from both Austria and Hungary.

In Yugoslavia, Croatia's position is quite different. Numerically and territorially it forms almost a third of the country, economically it is superior to other regions within the state, and it is controlled by a politically conscious and very well-organized peasantry which represents the strongest single political force within Yugoslavia. From this position of Croatia, it follows that Croatians are destined to exert a strong influence on the central government in Belgrade and on the political ideologies within the state. The Croatian Peasant Party takes part in the central government in Belgrade, holding five posts in the ministerial cabinet. There can be little doubt that Croatia's representatives will continue this participation, for such was the intention of those who were responsible for the new constitutional arrangement, the preamble of which expressly states that it was made "to insure the participation of Croatians in the life of the State. . ." This will in turn reflect itself in the internal and foreign policy of Yugoslavia, and undoubtedly lead to further constitutional changes. How far these new changes will go in the direction of, or away from, the further federalization and democratization of the country will greatly depend on the way in which democratic and totalitarian tendencies are affected by the international balance of power in the Balkans.

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REVIEWS

The Course of American Democratic Thought: An Intellectual History since 1815. By RALPH HENRY GABRIEL. New York, The Ronald Press Co., 1940.—xi, 452 pp. $4.00.

In this important pioneer study Professor Gabriel is concerned with the emergence of the American democratic faith in the mid-nineteenth century, and with its subsequent career. That faith, as he sees it, was the fruit of an endeavor to bring into harmony three potentially antagonistic ideas—the doctrine of the fundamental moral law by which conflicting programs of action were judged and rationalized; the doctrine of the free individual, free whether regarded as a means or an end; and the doctrine of an American mission to promote abroad as well as at home these two ideas and the social and individual well-being and progress implicit in them. The pervasive penetration of American social thought with these ideas is illustrated by a wealth of examples from Melville, Emerson, Thoreau and Whitman, and from the writings of social scientists, legal scholars, philosophers and religious leaders. Only rarely does Mr. Gabriel make use of folk-materials, though now and again he does refer to the songs of the people, to popular dramas, and to an out-of-the-way writing of a common man. This lack is somewhat redressed by the cognizance taken of such rituals and symbols as the flag, the worship of the Constitution, and the Lincoln cult.

No student of American intellectual history can fail to pay high tribute to Professor Gabriel's sensitive, and often penetrating, awareness of how the pattern of democratic thought has been affected by a revamping of theories of free will and determinism, of absolutism and relativism, and, above all, by the rise of the new challenges of insecurity and of antagonistic foreign ideologies. Professor Gabriel has succeeded well in treating the ideas he has chosen with respect to their development in time: one only wishes that he had shown in how many respects American democratic thought in the period subsequent to 1815—his point of departure—resembled the individualism of Franklin and Jefferson, the nationalism of Freneau, Barlow and Noah Webster, and the fundamental, moral law concept which so interpenetrated the thought of the Revolutionary period.

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One of the most praiseworthy features of these brilliant essays is the author's awareness of the relation between democracy as a faith or pattern of thought and feeling on the one hand, and, on the other, realistic democracy, as Professor Gabriel calls it, or the give-and-take, every-day compromises between conflicting groups and the rationalizations of practices inconsistent with democratic theory. These interrelationships might well have been more concretely and more consistently developed. Many will also regret the relatively slight attention given to the conflicts within the agricultural, industrial and financial aspects of economy, and the effects of these on democratic thought. It is this, probably, which accounts for Mr. Gabriel's rare (but always convincing) specific relation of an idea to its function in the social process, and for his frequent treatment of ideas in a vacuum (those of Calhoun are discussed virtually without reference to slavery). This awareness of, but casual use of, the functional approach to intellectual history is less a reflection on Professor Gabriel than it is on the inadequate attention which historians have given to the subtle but basic concepts of causality, especially in the field of the history of ideas.

Any student of this field, realizing the stubborn nature of such methodological problems as these and the multiplicity of material and of possible inclusions and exclusions, hesitates even to suggest regret at omissions. But it is not easy to understand why Professor Gabriel has given such slender attention to American public education in view of the fact that no institution has been more democratic than the public school and that no idea has been more basic to American democratic thought than the conviction that through more and better education the individual might really become more free, the law of progress more fully achieved, the fundamental moral order more completely exemplified, and the nation's destiny more amply realized.

Although Professor Gabriel knows that many of the elements in the American democratic faith were to be found abroad, one wishes he had more sharply noted similarities and differences between American and European expressions of related forces. Why, for instance, were pietism, puritanism and evangelicism in Europe less democratic than in America? Did naturalism in the Old World provide fewer sanctions to democracy than in the New, and if so, why? And what were the essential differences between Samuel Smiles's rationalizations of the self-made man and those of Freeman Hunt or Horatio Alger?

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Yet whatever omissions *The Course of American Democratic Thought* may have, it is the most important book on the subject. It will, surely, long remain indispensable to any student of American intellectual history and of American democracy.

MERLE CURTI

No Compromise: The Conflict between Two Worlds. By MELVIN RADER. New York, The Macmillan Co., 1939.—403 pp. $3.50.

This book is a lucid and scholarly attempt to establish the nature and the origins of the difference between fascism and democracy. Professor Rader considers that they are worlds apart and that between these two worlds, both of thought and of action, there can be no compromise. His main preoccupation is to show the historical roots and analyze the theoretical grounds of fascism, their democratic counterparts being expounded as a running critical comment. He thus successively considers the flight from reason, the conflict between emotional and scientific values, the theories of race, élite, state and class, and the prospects of Western culture in the face of an attack which, as he says, hides a gross practical purpose under an idealistic mask.

Professor Rader has done a great deal of reading, both contemporary and retrospective, in the cultures of Germany, Italy, France and England. Knowing more than he uses, he marshals his facts, selects his quotations, and advances his conclusions with the greatest possible skill. His style, which keeps a balance between abstraction and imagery, is a pleasure to read, for it avoids both dullness and sensationalism. In short, Professor Rader, could one but follow him in every major point, would have performed a useful task to perfection.

The reservation implied is simply this: his notion of "No Compromise", which is fully intelligible in the realms of feeling, politics or war, has misled him into supposing a radical, uncompromising difference in the cultural heritage and present aims of the two opposing blocs. Though Mr. T. S. Eliot has already indicated in *The Idea of a Christian Society* that the line of cleavage should fall elsewhere, it would require another book of the size of Professor Rader's to make this objection plain. Perhaps it can be inferred from one or two concrete points. On his first page Professor Rader says that "two world movements are at death grips and divide the world between them. One is Fascism, the other

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Socialism." Professor Rader himself inclines to socialism, as he does to materialism and science, but this world division overlooks the socialist action taken in fascist countries and vice versa. Similarly the author makes a radical division between rationalism, which is for him a democratic, scientific and hopeful doctrine, and romanticism, which he considers irrational, dangerous and unscientific—in short, the spiritual ancestor of fascism. This historically false dichotomy makes him class Carlyle, Nietzsche and Hegel as precursors of fascism, and leads him to speak very unjustly of Bergson, Pareto and William James. He forgets that Hegel is also a precursor of Karl Marx; that Carlyle spoke in circumstances and with qualifications which preclude the right to call him fascist; that Pareto's criticism of social science earned the approbation of a great liberal rationalist like James Harvey Robinson; and that William James's pragmatism should be understood from his own works and R. B. Perry's biography, not from Mussolini's highfalutin speeches and supposititious autobiography.

To sum it up in a word, Professor Rader seems to me to have overlooked the unity of European culture in general and the historical and biographical setting of individual utterances in particular. He pins his whole faith to scientific method, confusing it, I think, with the spirit of inquiry and free discussion, which is a much larger realm. He thinks irrational is a term of reproach, instead of an irreducible fact of experience to be dealt with gently and wisely, as Freud has taught us. With respect to cultural continuity, Professor Rader has overlooked the fact that within Western culture, traditions and allegiances make a crisscross pattern which forbids the neat alignment of "Two Worlds" except on the field of battle. National policies follow other, more devious lines than professed philosophies would suggest—witness the Russo-German pact. Fascist movements exist in democratic countries that are quite untouched by the alleged "romantic" influence of Fichte and Hegel. And lastly, the romantic theory of conflict, the cult of energy, even the nationalism and racialism of the early nineteenth century, are very different things from those called by the same names today. Herder, Fichte, Gobineau, Nietzsche—to take only the most violent in expression—would be aghast at the uses to which their ideas have been put. The critical task, then, is to condemn their errors while we salvage their wisdom; to study fascist and democratic cultures, not as two alien worlds, but as intermingled strands of the same European culture which we share—strands which are in our epoch

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twisted and strained by internal disorders, but which cannot be severed and finally amputated without loss to the whole fabric. For as John Stuart Mill pointed out, what we suffer at the hands of our enemies comes not from their wisdom but from their folly.

JACQUES BARZUN

COLUMBIA UNIVERSITY

Parliament. By W. IVOR JENNINGS. New York, The Macmillan Company; Cambridge, England, at the University Press, 1940.—xiii, 548 pp. $6.00; 25*s*.

Dr. Jennings, though still in his thirties, has written a dozen books during the past decade. His legal treatises—on such subjects as housing, public health and poor relief—are not widely known outside Great Britain. It was *The Law and the Constitution* (1933) that first indicated, to American students of the British political system, the rise of a new authority; and it was *Cabinet Government* (1936), with its massive scholarship and original design, that put Jennings definitely in the front rank. *Parliament* has enhanced his prestige. He now promises to give us a volume on the party system. Such a contribution will be doubly welcome: first, because the author is so well equipped (aside from his strong socialistic bias); and, secondly, because so little has been done, since Ostrogorski's time, to illuminate that field. Eventually, perhaps, the institutional survey will be completed by other volumes. Let us hope that it will not become, through the shattering catastrophe of war, a memorial, a monument to the dead; and that there is no immediate prospect of Macaulay's New Zealander, in the midst of a vast solitude, taking his stand on a broken arch of London Bridge and sketching the ruins of St. Paul's.

According to Michael MacDonagh, Parliament becomes almost an abstraction when divorced from the personalities that compose it. It was no abstraction to MacDonagh. Thirty-five years in the press gallery made him familiar not only with the intricacies of procedure, which he divested of their technical apparatus and expounded intelligibly to laymen, but also with the characters and motives of the politicians; and this experience, combined with a journalistic facility, gave his book vividness and popularity. Dr. Jennings, on the other hand, was bred to the Bar. His writings have been mainly legalistic. He tends to be somewhat pedestrian. But his interest in politics, apart from law, has been mounting of

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late. He has escaped from formalism and dullness by drawing freely upon the debates and by saturating himself with biographical literature. Moreover, he has given us a realistic picture of parliamentary life as it now is. This painter, refusing to be an imitator or mere copyist, has trusted his own vision, broken away from the old masters, and produced a picture that has freshness and originality, even though it may fall short of classical standards.

Parliament gives the impression of contemporaneousness. It does not read like the fifth edition of an antiquated masterpiece. That the salary of the M.P. now stands at £600, that the leader of the Opposition receives an additional £2,000 and a room in the House, that the guillotine and kangaroo are applied in standing committees, that the Labor Party contested the constituency of Speaker FitzRoy in 1935 and has adopted a candidate to oppose him in the next election—such details already had a place in the scene that the author set out to describe. There are a great many significant statistical data. For example, we are shown how many bills were introduced, in each of six sessions, by the government and private members, respectively, and how many became law; the average age of members, both for the House as a whole and for each party, the average length of service, and the average age on entering the House; how many Labor candidates were financed, in 1935, by trade unions, local associations, or coöperatives. It is unnecessary to emphasize the value of such concrete material.

A general verdict of high commendation does not mean that there is nothing to criticize. Positive errors, though occurring rarely, do betray strange ignorance now and then. Three times or more the aisle of the House is called the gangway; Cobden (instead of Cobbett) is represented as taking and refusing to give up Peel's seat when the latter led the Opposition and eight years before Cobden entered the House. The footnotes are, in one respect, execrable. When books are cited (often by incorrect titles), the author's name is omitted, or at any rate his initials, and likewise the date, edition and number of volumes. A bill of particulars would occasion astonishment. It is not as if Dr. Jennings did not understand what good form requires: he gives the date of every judicial decision; and in *Cabinet Government* his bibliography conforms meticulously to the most severe standards. At first sight the index wins approval. But investigation will show that its fullness is deceptive and that it cannot be relied upon as a guide to all that the text has to say on a particular subject.

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The text itself is not systematic or well proportioned. One encounters amplitude here, sketchiness there, without being able to find any explanation other than caprice. Some matters of great importance have been neglected altogether. Why is there nothing about the method of voting in the House, or about the royal assent to bills, or about the suffrage, polling and controverted elections? Similar vagaries puzzle the reader of *Cabinet Government*. Dr. Jennings is a socialist. Although he has tried (he tells us) to suppress his partisan inclinations, they do show themselves occasionally in a mild form. Whenever he becomes facetious or sarcastic, he does so at the expense of Conservative politicians, especially peers. Yet, unlike some of his fellow socialists, he does not scent a conspiracy when two members, having exchanged harsh words in debate, go home in the same taxicab. He even thinks well of the ancient forms and ceremonies which contribute so much to the authority of the Speaker.

EDWARD MCCHESNEY SAIT

POMONA COLLEGE

Die Hegemonie: Ein Buch von führenden Staaten. By HEINRICH TRIEPEL. Stuttgart, Verlag von W. Kohlhammer, 1938.—xv, 584 pp. RM. 15.- - -.

This book is clearly divided into two parts, one sociological, the other historical, history being used to "verify" conclusions previously arrived at. In his sociological discussion Triepel offers what may be called a phenomenological description of hegemony in all its forms and appearances—among individuals, groups and states. His definition of "hegemony", not generally accepted, is "leadership" (*Führung*), as distinguished from "domination" (*Herrschaft*). While the latter is a power-relation based on force, or the menace of force, hegemony influences the will and the conduct of men not by threat of compulsion but by other less direct means, especially by what Max Weber called the charisma of the leader, the peculiar authority of strong personalities. In the course of a detailed discussion of the various theories which have dealt with the phenomenon of leadership, Triepel offers a number of interesting suggestions and subtle observations, especially when dealing with phenomena of international relations in which sociological inquiry has been much neglected. His description of the types and instances of hegemony in the relations between states, particularly confederacies and federal

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states, from ancient to modern times, is the first thoroughgoing study of these complicated phenomena.

Without detracting from the great merit of this book, one is compelled to make a reservation as to the author's basic ideas. When he deals with relations among individuals, Triepel defines leadership (hegemony) as a non-compulsory influence of one will upon others. But as regards social groups, and particularly states, he simply presupposes that here, too, hegemony is of the same character. These groups, in an organismic way, are considered as entities having a will of their own. In discussing actual cases, however, Triepel suddenly deals with relations of dependency of the most varied kinds, relations based not only on spiritual, charismatic influence but on economic, military and similar kinds of preponderance. He even goes so far as to deal with armed intervention as one of the forms in which "genuine hegemony" may find its expression! We are entitled to ask how this kind of "leadership" is distinguished from the *brutum factum* of a power-relationship based on sheer force. The danger of such a conception of leadership is that it may well imply an "ideological" interpretation of history, for example, by transforming certain relations of stronger to weaker states or groups into a benign "white man's burden" or perhaps an "Aryan mission". Even when dealing with *intra*-state relations Triepel is not always free from rationalizing. Thus he declares that Hitler is the genuine leader not only of his National Socialist followers but of the entire German people. Why, then, concentration camps and secret police? This is exactly the ideology which has served every Caesar or Bonaparte in legitimizing autocracy by a spurious "consent of the governed".

It is to be regretted that Triepel has not endeavored to go to the very roots of hegemony relationships in the international field. Economic, military and similar kinds of preponderance are often indistinguishable from real domination. At the height of an imperialistic era the influence exerted by a great power hardly grows out of a voluntary acceptance of leadership (*freiwillige Gefolgschaft*) on the part of small dependent states. It would have been a worthwhile undertaking to inquire whether, among states, there are also those forms of genuine leadership which are really based on charisma and which would give a state as such an authority comparable to that of certain great individuals. An analysis of that power of suggestion which certain political creeds, dominating certain states, exert upon other states or groups would probably lead to interesting

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results. Without reference to more recent examples, was not revolutionary France already *la patrie* of the oppressed peoples?

Except for a certain bias in favor of Prussian as compared with other cases of federative hegemony, the book is objective throughout—*sachlich* in the best sense of this German expression. In both breadth and power of analysis it is remarkable. It is an appropriate completion of a life work which has put the author not only among the foremost international lawyers of his time but also among the few constructive thinkers in modern German political theory.

JOHN H. HERZ

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The Earth and the State: A Study of Political Geography. By DERWENT WHITTLESEY. New York, Henry Holt and Company, 1939.—xvii, 618 pp. $3.75.

Whittlesey's attempt to describe "the areal differentiation of the world's principal states and legal codes, insofar as these political phenomena are firmly established and their character clear", is an ambitious project which is noteworthy for its extraordinary virtues and weaknesses. As a laboriously prepared treatise on political geography, a field which has become one of the pillars of the present German political philosophy *(Geopolitik)* and which is only beginning to be known to the American social scientist (although Isaiah Bowman's *The New World* has been used extensively in the United States for a number of years), the present study is a conscientious inquiry into the degree of correspondence between the patterns of states and the patterns of the natural environment, and the organic relation between political and natural phenomena. The chapters are devoted to particular states in different parts of the world, to groups of states similar in their geographic relations, or to areas deserving treatment as a whole — East Central Europe, the Mediterranean Realm, Africa and the Americas—"because they possess in common some basic natural feature compelling in its political implications."

From the geographer's standpoint, here we have a very worthwhile conglomeration of facts, gathered from far and wide, which will be referred to by all the students of the problems of geography in relation to natural phenomena. Unfortunately, we cannot be so enthusiastic when viewing the work from the standpoint of politics, and especially from that of integrated social sciences. Whittlesey

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has made hardly any attempt at all to introduce us to the theoretical basis of *Geopolitik*. After all, any field claiming the distinction of academic recognition needs to justify itself theoretically — and particularly the one explored by Whittlesey. Yet we have here nothing whatever about Rudolf Kjellén as the creator of "Geopolitics", the term which—as Edvard Thermaenius pointed out in "Geopolitics and Political Geography", *Baltic and Scandinavian Countries* (May 1938, vol. IV, pp. 165-177)—has at least five different meanings and implies five distinct notions. We have here nothing about its contemporary prophets such as General Haushofer whose ideas underlie the goals of Hitler's foreign policy and are now being popularized in this country in Herman Rauschning's *The Revolution of Nihilism*. It is also very regrettable that Whittlesey has failed to present us with a respectable bibliography. He acknowledges that he has "drawn freely on both general works and detailed studies in the specialized field", but omits references even to the most important works because of his assumption that "documentation or even a complete bibliography of all these items would defeat its own purpose, by its very mass, and by throwing out of scale the references specifically drawn on as compared to items equally fundamental but not directly citable", and that "Citation of references to publications, and to a less extent the listing of them, lies open to the further objection that it overemphasizes the printed word in comparison to field studies, on which the book is so considerably based."

Our additional objection to Whittlesey's approach is that he is, at heart, another proponent of geographic determinism. For example, the conclusion that "the political concepts held by any group derive from their natural environment" (p. 557) is scientifically untenable as a generalization. The psychological and sociological factors of imitation, transplantation and acculturation, in addition to others, need to be considered also as important variables. Or, to assume that geography was the determining factor in the expiration of the Czechoslovak state (p. 207) underestimates the importance of such factors as the lack of military preparedness of England and France, the unwillingness of the Western democracies to fight during the Munich crisis, the belief of the Prague government in the ideological promises of its "friends" in Paris and London, the unwillingness of the English ruling clique to unite with Moscow at that particular time, and so on. Whittlesey is, it is true, a good geographer, but he is unwilling to look very far over the fence of his own

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limited field and see how the surrounding social science pastures, including his own fence, fit into the complex picture of numerous social forces which frequently do havoc with all the laws of geographic determinism.

Although this is not a great book, not one with any profound insight into this important new field, it is nevertheless a useful book, particularly as a handbook containing an extraordinary amount of geographical knowledge. Whittlesey has achieved a good reference work on the influence of geography on politics, but he has missed an opportunity. As a result, the product leaves a confused impression upon the mind. This conclusion rests partly upon Whittlesey's style which is cold, dry and underwritten, and jogs along at a pedestrian gait.

JOSEPH S. ROUCEK

HOFSTRA COLLEGE

Black Workers and the New Unions. By HORACE R. CAYTON and GEORGE S. MITCHELL. Chapel Hill, The University of North Carolina Press, 1939.—xviii, 473 pp. $4.00.

Here is a book which stands out in the recent flood of publications on the American labor movement, and which deserves far wider reading than it will probably ever receive. Its material is the product of a thorough exploitation of the literary sources and of a large number of personal interviews with managers and foremen as well as with workers and union officials. The understanding and sympathy with which the authors approach their subject are matched by their lack of apparent bias and their dispassionate tone. Their study is packed with detailed information of value to the labor historian, the labor economist, and the student of race relations. In every respect, *Black Workers and the New Unions* is a fitting companion to the two volumes which have preceded it in the series planned by a special Committee on Negroes in the Economic Reconstruction. — *The Collapse of Cotton Tenancy* and *A Preface to Peasantry.*

Quite correctly this examination of the Negro's position as an industrial worker and his participation in the union developments of recent years is not limited to the Negro worker alone. The elaborate setting within which these problems are developed embraces, in addition to an analysis of the factor of racial prejudice, treatment of the whole question of Negro class attitudes and relationships;

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data on the composition of the labor force and earnings and conditions of work in the industries studied; an account of trade-union developments since 1933; an excellent presentation of the consequences of the labor policies and legislation of the New Deal; and an evaluation of the techniques of labor management and control utilized by employers. The study is concerned largely with three basic industries—iron and steel, meat packing, and railroad car shops—in which Negro industrial workers are well represented and in which great numbers of unskilled laborers are employed. These industries, too, have witnessed sharp struggles over the question of unionization, and they may even provide the future "pattern of race relations in union organization" for the nation. One section of the book deals with results flowing from the growth of Negro union membership in Birmingham, an industrial center marked by extreme racial antagonism. The last two chapters, which are more theoretical in character than any of the others, deal respectively with the relationship of union organization to the Negro community and with a program for the more rapid and extensive unionization of Negro workers.

Tremendous obstacles stand in the way of the efforts to bring the Negro within the area of the American trade-union movement. Not the least of these is the opposition of upper-class Negroes to union organization. The authors propose that Negro workers utilize a device employed with particular success by Jewish workers and organize a "federation of Negro trade union members" along the lines of the United Hebrew Trades. A "United Negro Trades" organization could serve as a vehicle for bringing workers into the existing trade-union movement without setting up distinct Negro unions or raising the threat of dual unionism, and could also carry on a number of important functions related to this primary objective. Successful organizing campaigns such as those of the S.W.O.C., which are exceptional, have not led the authors to expect large-scale increases in Negro union membership in the near future. "Persons interested in enlisting Negroes in the union movement", they justly remark, "can hope to overcome only gradually the many difficulties involved. Under present conditions, Negroes will remain the lowest paid of the industrial workers. Only when they realize that the myth of the 'black economy' is just another escapist mechanism . . . will they attempt to organize and demand a greater share of the national income. Those interested in assisting them in industrial emancipation will face the problem of invading every

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institution in the community, contesting the Church's doctrine of salvation through resignation, questioning the worth of the vicarious grandeur offered by the fraternal orders, and emancipating the mass of the workers from the hold of the ultra-nationalistic, race conscious upper class. Only out of this fundamental redirection of the ideals and values of the Negro community will a Negro labor movement be born."

So great is the wealth of data in the volume that general considerations are sometimes in danger of being obscured. This, however, cannot be pressed as a serious criticism. At worst it only occasionally makes the volume somewhat less readable than it might have been. In any case, the inclusion of the mass of material bearing upon a whole host of questions—such as wage differentials, the organizing techniques of the S.W.O.C., the sources and consequences of interunion conflicts, the nature and results of conservative union leadership, and the rôle of the left-wing unions, to mention only a few—is always pertinent and illuminating, and provides its own justification.

HENRY DAVID

QUEENS COLLEGE

The Ending of Hereditary American Fortunes. By GUSTAVUS MYERS. New York, Julian Messner, Inc., 1939.—vi, 395 pp. $3.50.

This book is not a sequel to the *History of the Great American Fortunes,* as the title might indicate; it is a parallel treatment of a development concurrent with the activities from which those fortunes were derived. Myers asserts that "inequality of power and position conferred in law by accident of birth" (p. 3) was one of the first principles attacked by the American people when independence from England was achieved, and that this crusade has never entirely ended. On the contrary, under the New Deal it has taken on an increased vitality.

The first chapters sketch the successful assault upon privilege in the form of entail, primogeniture, hereditary office-holding, and the exclusive right of the rich to secure an education. While abolition of these prerogatives was being accomplished, however, other hereditary privileges were preserved by vesting them in corporations. Not only was a virtually immortal fictitious person with perpetual powers thus created, but at the same time control of those powers usually remained in the inherited estates left by the original promoters. As Myers emphasizes, one of the worst features of this system was that almost

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invariably the men who thus founded family fortunes did so upon a foundation of graft, or sweat-shop labor.

The abolition of Negro slavery during the Civil War was another triumph in the crusade; and at the same time a graduated income tax was levied. Although it was a very light tax, imposed on what were for the most part illegal profits gouged out of the nation's needs in time of crisis, it was bitterly opposed from the very beginning and, at the demand of "massed money", it was soon repealed. After the Civil War there was an interlude which lasted until the emergence of the Populist Party early in the eighteen-nineties. The attacks launched at hereditary privilege since that time are described in more detail; indeed, two thirds of the book is devoted to events of the past fifty years. In conclusion Mr. Myers evaluates the current demand that huge hereditary fortunes be taxed out of existence through inheritance levies; he admits that this method is not absolutely dependable, inasmuch as tax laws can be repealed, but at the same time he feels that it is the most practicable method.

Myers repeatedly describes some proposed reform, adverts to the contemporary roar of protest against enactment of what are termed "leveling and anarchistic" measures, and then depicts the lives of the rich protestants as compared with the lot of the laborers who were employed in the business producing great fortunes. Many pages do not read smoothly, but any lack of stylistic perfection is offset by the author's outspoken interpretations. In one typical case, commenting on the mildly worded report of the Senate Committee which investigated Wall Street in 1932 and 1933, Myers interprets the Committee's innocuous phrases to mean "in plain words, corresponding to the sordid ugly truth" that numerous bankers were "of narrow, shriveled mentality, lost to everything except the idolatry of money . . . cold-blooded, calculating and consumed by unslaked greed" (p. 309).

E. G. CAMPBELL

WASHINGTON, D. C.

The Way Forward: The American Trade Agreements Program. By FRANCIS BOWES SAYRE. New York, The Macmillan Company, 1939.—xiv, 230 pp. $2.75.

This book is based upon numerous articles and speeches by the author (now High Commissioner to the Philippines) in his capacity as Assistant Secretary of State and Chairman of the Executive Committee on Commercial Policy. As such it must be described as

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an "official" statement of the trade agreements program, but the bias, if any, which may result from this fact is compensated for in the accurate and authoritative way in which the subject is treated. As the author states in his preface, he has not written an economic treatise; rather, he has set forth an analysis of the trade agreements in the layman's language. With this in mind, Mr. Sayre has succeeded remarkably in avoiding excess detail on the one hand and oversimplification on the other.

In general the book is a lucid and forceful exposition of the whole subject, explaining the background of events which necessitated a change in this country's commercial policy, the reasons why the trade agreements were formulated as the best implementation of the new policy, the drafting of the legislation which gave the program life, the constitutionality of the Reciprocal Trade Agreements Act, and the manner in which it operates. The trade agreements are discussed in relation to the importance of foreign trade to the national economy and the growing economic interdependence of nations, and are defended as the most effective counterattack on the methods of economic nationalism. An estimate of the results of the twenty agreements in force on April 1, 1939 concludes the study.

It may be true that *The Way Forward* leaves certain questions unanswered, that some problems might have been treated more fully, and that too much is claimed for the trade agreements program. At the same time, the trade agreements are not advanced as a complete solution for all of the difficulties arising out of this nation's foreign trade. What is asserted is that a policy of opening up foreign markets and removing discriminations against American exports will alleviate the pressure of farm surpluses and enhance the prosperity of industrial labor by stimulating the trade upon which it depends. Further, the excesses and extremes of the Smoot-Hawley tariff are being gradually smoothed away and adjusted. Indeed, there is on the whole a laudable absence of dogmatic assertion in Mr. Sayre's discussion. Given the present situation, the trade agreements are simply the soundest approach, economically and politically, to the problem of trade barriers, from the point of view of both national self-interest and world conditions. It is difficult to impeach the argument in its fundamentals. Perhaps the strongest argument in favor of the Hull program is the utter lack of satisfactory alternatives, as the author clearly indicates.

This presentation of an important part of America's foreign policy is of value for two reasons: first, it is a brief and well-written

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survey of the trade agreements, of use to the student as well as the layman; second, it is a reasoned appeal to the possibilities inherent in economic internationalism as a means of stabilizing peace and fostering the welfare of mankind.

RICHARD C. SNYDER

NEW YORK CITY

Developments and Issues in the Theory of Rent. By CARL ROLLINSON BYE. New York, Columbia University Press, 1940.—vi, 133 pp. $1.75.

Students of economic theory will find this treatise by Professor Bye of Syracuse University a very useful work. By skilfully avoiding details, the author presents a summary of rent theory and an evaluation of the ubiquitous controversial issues related thereto. After reviewing the classical theory of rent, which was a "modified and reinterpreted Ricardian rent doctrine", various contemporary supplemental and alternative views of land rent are presented as "developments" in the theory. The latter include treatments of rent as a surplus, as a monopoly income, as a scarcity income, as an unearned income, and as a price. The author then presents developments which emphasize the breadth of rent theory and its applicability to portions of so-called wage, interest and profit incomes. Indeed, he concludes that "except for the discredited notion of consumers' surplus, the idea of rent may be considered as extending throughout the entire range of value and distribution theory."

The author carefully examines two "underlying issues" which pervade much of the controversy over rent theory: "the dispute over the distinction between land and capital" and the "disagreement on the relationship between rent and price." The conclusion on the first issue is that, while economists who deal with a pecuniary economy may find it advantageous for certain purposes to treat land and capital within a single concept, there are "contrasting peculiarities of return" and hence a "theoretical distinction between natural and produced wealth." The principle of opportunity costs and the current equilibrium analysis make it possible and valid to relate rent to commodity prices in the same manner as are interest, wages and other costs.

An excellent summary chapter traces the evolutionary trends in the theory of rent. The concept has tended to expand, in accordance with business usage, to include income from man-made durable wealth as well as from natural resources. Its scope has been

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extended to include certain "surplus returns envisioned in all distributive shares". These amplifications of the scope of the concept have created "disorder and confusion". The author indicates that progress in the field of rent theory lies in two directions: (1) a clarification of the nomenclature involved, and (2) further development of a "single comprehensive principle which can be applied uniformly to all branches of income." Toward such progress this book makes a contribution which will be recognized as substantial by all advanced students of economic theory.

William N. Loucks

The University of Pennsylvania

Japanese Industry: Its Recent Development and Present Condition. By G. C. Allen. New York, Institute of Pacific Relations, 1940.—xi, 124 pp. $1.00.

The Problem of Japanese Trade Expansion in the Post-War Situation. By Miriam S. Farley. New York, Institute of Pacific Relations, 1940.—xii, 93 pp. $1.00.

These two studies are part of the extensive documentation of an inquiry organized by the Institute of Pacific Relations for the purpose of presenting an analysis of the factors underlying the existing situation in the Far East, and an estimate of "the principal political, economic, and social conditions which may be expected in a post-war period, the possible forms of adjustment which might be applied under these conditions, and the effects of such adjustments upon the countries concerned." (p. viii of each book)

Professor Allen is primarily concerned in his study with examining the present conditions of Japanese industry with a view to estimating the future course of developments. Will Japan be able to produce or purchase from abroad the material she requires for continued military operations? In so far as iron ore, special steels, textile materials, oil, timber, pulp and many other essentials are concerned, Professor Allen believes that Japan must for some time continue to depend on imports from areas outside the "yen bloc". This is a situation which "need not cause Japan acute alarm so long as Western countries are prepared to sell the goods to her" (p. 110), for, wrote Professor Allen late in 1939, she will probably "be able to sell sufficient goods and services to the outside world for many months to come to enable her to buy essential imports" (p. 110). The author concludes "that Japan's economic position is not so

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weak as to prevent her from carrying on the present war effectively for at least another year, and probably much longer, provided the Western Powers remain passive spectators of events" (p. 111).

When the war ends, Professor Allen believes that Japan will be faced with a serious dilemma. If she attempts to revert to a relatively free economy—which will of course be largely influenced by conditions elsewhere in the world—she will be obliged to reorganize and reëquip her industry on a wholesale scale. Her industrial structure has become so distorted in consequence of supplying war-time needs that the task would be extremely painful and costly. But should Japan choose not to abandon her *Junsenji* or "quasi-war-time" economy, she would doubtless find it necessary to intensify her present economic controls in the hope of achieving political gains despite the practical certainty of further reducing the standard of living of her people. Professor Allen does not predict which path Japan will choose but suggests that a reversion to a peace-time economic policy would in the long run win for her people the greater material advantage.

Miss Farley's study is divided into two parts: the first appraises the effects of the war on Japanese foreign trade, and the second, the problems which will confront Japan in her post-war trade adjustment. The author points out that "a primary objective of the present war is to construct, on the basis of Chinese resources and Japanese technology and enterprise, a more or less self-sufficient integrated economy . . . [but that] Japan is at present not much nearer the accomplishment of these objectives than she was at the beginning of the war" (p. 28). Trade has expanded with the occupied areas but with only slight gain in self-sufficiency.

Regardless of the outcome of hostilities, Miss Farley feels both that Japan will need foreign loans and favorable trade arrangements and that foreign countries will find it in their interest to provide such assistance. Such an order of affairs, she points out, implies first of all international economic coöperation. Because of the preponderant share of Japan's trade with the United States and the British Empire, the policies of these two countries, she believes, will be decisive in determining the extent and nature of such coöperation.

The two books under review are to be recommended highly for their excellent analysis of economic conditions in Japan in both the pre-war and the war periods. The sections devoted to speculation concerning the post-war period, although interesting, are less satisfactory. For example, the alternative paths between which Japan

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must "choose" in the post-war period are, according to Professor Allen, a reversion to a relatively free economy or a further development of a *Junsenji* economy. Present indications, however, are that Japan's "choice" may not at all be of her own making and, further, that it may therefore be wholly unrelated to what will serve her own best interests. The international economic coöperation with Japan in the post-war period, which Miss Farley believes is necessary to assure world stability and progress, she feels can materialize only under conditions which history indicates "are unlikely to result from a post-war settlement imposed by force by one nation or group of nations upon another" (p. 71). But what other kind of settlement of the present conflict appears even remotely in prospect?

The above comments are not to be regarded as reflecting on the authors' selection of certain subject matter. This presumably was assigned, and at a time when organizations such as the Institute of Pacific Relations, conscious of United States unpreparedness for war, were anxious that the country should at least not suffer from unpreparedness for peace—a peace which, if indeed it is to come, must now seem far more distant than when these studies were undertaken.

Ben Dorfman

Washington, D. C.

American Diplomacy concerning Manchuria. By Stephen C. Y. Pan. Boston, Bruce Humphries, Inc., 1938.—xx, 385 pp. $4.00.

At the time when the policy of the Open Door is defied by Japan, it is all the more important to reconsider its past. Dr. Pan's book outlines this policy of the United States in the Far East. The title of his book is limited to American diplomacy concerning Manchuria. This limitation is, however, not supposed to mean that the author deals only with a section of this policy. Manchuria becomes rather the focal point, the test case for the whole system of diplomacy called the Open Door. The author shows the significance of this policy, how it was realized and how it was hampered by other considerations of the Powers representing it, especially the United States. The general background is discussed on the basis of rich material.

To prove the Chinese sovereignty in the three eastern provinces known as Manchuria, the author starts out with a chapter on "Geo-

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politik". Explanations—not all of equal value—of the origins of the term "Manchu" and "Manchuria" are given from several sources. The Chinese history of this territory is outlined and its great economic possibilities are stressed as the chief cause of the international conflicts about Manchuria.

On this basis the foreign interests and particularly the ideas which govern American policy are discussed. The different elements contained in the Open Door doctrine are developed. It is shown how the most favored nation treatment leads to the idea of equal opportunity which can, however, be guaranteed only if Chinese sovereignty is respected by all the Powers concerned. And the author rightly emphasizes that "without territorial integrity, equal opportunity of trade would become practically meaningless."

The dispute over the origin of the doctrine, whether it is English or American, is answered in favor of the latter, with the sound argument that it is the actual adaptation and sponsorship of the policy by John Hay which really matters.

In a characterization of American political principles Mr. Pan finds that, while America has been upholding the principles of international law, peace in the Far East has been also in her best interests as a commercial nation. The Open Door policy was therefore not a policy of pure "unselfishness", but served the American interests "with a minimum of effort."

The book indicates how this doctrine was used at first against Russian and later against Japanese penetration. We read about the doctrine before, during and after the Washington Conference. Although the Washington Conference secured the widest legal codification of the principle of the Open Door, the already established Japanese monopolies in Manchuria remained. And when Manchuria is finally occupied by Japan, the logical outcome of this Open Door policy, which we may call defensive, is Secretary Stimson's non-recognition policy, and its continuation by President Roosevelt and Secretary Hull.

The author adds a chapter, "The Open Door in Manchukuo", which he calls "nearly closed". We are convinced that the term Open Door", although used in promises by Japan and in protests by England, actually loses here its original meaning, since Chinese integrity, which the author himself has stressed as a necessary element, has disappeared.

The author has very liberally quoted not only the official documents, but also the opinions of leading statesmen, scholars and

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journalists. His book with its wide range of information is of great value especially today, when the whole system is challenged by Japan; and when the American answer to this challenge will be of greatest importance with regard to the final outcome of the present struggle and the future of East Asia and the Pacific.

FRANZ MICHAEL

THE JOHNS HOPKINS UNIVERSITY

Papers Relating to the Foreign Relations of the United States: The Lansing Papers, 1914-1920. Washington, United States Government Printing Office, 1939.—2 volumes. lxii, 801; xl, 576 pp. $1.50; $1.25.

With these two volumes, added to the twenty-one other volumes issued for the same period by the State Department, the American public has now available practically a complete record of the important United States documents of the World War years. These latest volumes open to full view the main processes by which the Department and the Chief Executive formed policy and carried it out. In doing so, even records of conversations and memoranda are published.

The documents are largely those returned to the Department after Lansing's death; the remainder are those omitted in earlier volumes of *Foreign Relations*. Cross references to earlier volumes are numerous. This device necessitates use of the entire series to follow the threads for the years involved. The editing is competent, but the index is not sufficiently detailed: Wilson's significant definition of "open diplomacy" (II, 112) cannot readily be found from it, nor the report of his delicate conversation with the Italian Ambassador about the League of Nations and Italian rights, January 29, 1918 (II, 94).

Probably little new controversy will be aroused by these volumes despite the added information they contain. No material shift in the prevailing high opinion of Secretary Bryan is produced by the papers, though one adds admiration for his fairness to his Counselor, from whom he differed so greatly in viewpoint and manner. However, there emerges a higher appreciation of the rôle, judgment and ability of Robert Lansing. As Counselor and as Secretary, he evidenced an incisive mind which usually harnessed his emotions and habitually drove through masses of facts and assumptions to conclusions with Euclidian logic. His strong tendency during 1915 and 1916 to argue the imminent necessity of severing relations with

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Germany, and the case for war, was safely controlled by the President until the events of early 1917. For the rest, Lansing was more helpful to the President than had been believed. He did not fail to state to the President (I, 16-18; *cf.* I, 636) and to Colonel House (II, 118-120) his opposition to a League of Nations, and his preference for a League of Democracies.

Though Colonel House's views and reports were occasionally determinative, his participation was sometimes embarrassing as well as useful to the State Department (I, 521). The various Ambassadors apparently did not exert great influence on the President; Frederic Penfield's dispatches from Vienna were the most useful.

President Wilson clearly dominated policy. His judgment and guidance of policy are constantly evident. It is clear that he accepted criticism and welcomed suggestions. Political considerations had little bearing upon his decisions in foreign relations, merely influencing the timing and strength of certain policy moves (I, 515, 570-571).

The interpretation is corroborated that Wilson did not decide for war until immediately after March 19, 1917, and that his decision was made despite apprehensions as to the attitude of certain members of Congress (I, 628-629).

The volumes reveal new information as to policy (1915-1917) concerning the Japanese demands on China and the unsuccessful project for a Pan American pact. The most significant document on American participation in the war is the penetrating report of General Tasker H. Bliss, United States Military Representative on the Supreme War Council (II, 199-303).

Vital though these papers still seem, they were written in an international world that has become historical: their authors unconsciously assumed that the then existing framework of the economic, social, legal and political world order would only temporarily be disturbed by the armed conflict of their day.

HARLEY A. NOTTER

WASHINGTON, D. C.

Stalin's Russia and the Crisis in Socialism. By MAX EASTMAN. New York, W. W. Norton & Co., 1940.—284 pp. $2.50.

Those who have regarded the fate of socialism as integrally tied up with that of the Soviet Union will find Max Eastman's book, *Stalin's Russia and the Crisis in Socialism,* a critical outline of how an ideology with an orientation toward a better life became Stalin-

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ized. Max Eastman was a Soviet enthusiast after the Revolution of 1917, but by 1925, when he wrote his defense, *Since Lenin Died,* of the Trotsky position in the factional controversy, he began to show traces of heresy; even Trotsky repudiated this book. Since then Eastman has veered from a criticism of an ideology with false "blue prints" to indignant protestation against the failure of the Russian Revolution. The underlying presuppositions of Marxism are therefore questioned, now that they have become transformed into the flesh and bones of ruthless totalitarianism.

His basic attack is aimed at Marxian monism that permits of unity and identity of the evolutionary development of nature with the necessary historical emergence of the working class; the party, with the absolute interest of the workers; the Soviet state, with the interest of the international proletariat, and Stalin with the interests of civilization. This, he contends, is religion in "a system pretending to be scientific, and indeed to be a kind of super-science. Marxism will be laid away with Thomism, Calvinism and the rest. The sole use science has for *isms* made out of a man's name is to ridicule subjective and unverified emotional beliefs." Nor can those who try to avoid the morass by treating Marxism as a theory of social action escape the pious wish that the future holds "sympathetic intentions" for the ultimate victory of socialism under the aegis of the Soviet state. It therefore is not at all accidental that the Comintern should carry on "class warfare" from 1919 to 1923 against "labor governments" and "yellow unions", only to support them again from 1924 to 1928 and again denounce them from 1928 to 1935, only again to rediscover them in the form of the Popular Front and renounce democracy after September 1, 1939. The metaphysical pontifications of the Marx-Engels Institute in Moscow, by a dialectic peculiar to itself, had traveled from "class warfare" against democracy and socialism to "class collaboration" with the Nazis. To be sure, what was inevitable had come to pass, not because of any similacrum or identity between the contradictions in nature or in society, as expounded by the prophetic philosophy of dialectical materialism, but because the will of Stalin had moved the Soviet state to ally itself with Germany. The will of Stalin is now being rationalized into contradictions of capitalism in general, and that of France and England in particular.

In many ways it can be said that the title of the book is a misnomer, for Eastman, in his desire to settle scores with his American "friends of the Soviet Union", turns polemical and bequeaths them

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all the contradictions that they inherit by virtue of their allegiance to the classless ideal. But Eastman's "experimental scientific party" can hardly be offered as a fitting substitute for the group interests that are neither rational nor scientific. His plea for intelligence and experimentalism in politics can be said to be programmatic in form, but hardly in content. The critical abilities of Eastman have demonstrated that ruthless political experimentalism in the name of a "scientific party" has created a society which is hardly a pleasant place in which to live.

JOSEPH CARWELL

NEW YORK CITY

Samuel Jones Tilden: A Study in Political Sagacity. By ALEXANDER C. FLICK, assisted by GUSTAV S. LOBRANO. New York, Dodd, Mead & Company, 1939.—ix, 597 pp. $5.00.

Samuel J. Tilden almost became the nineteenth president of the United States, almost brought the Democratic Party into power in 1876 and 1880, almost succeeded in terminating the era of the "bloody shirt", almost became the undisputed leader of his party, and almost ended the sway of Tammany Hall in New York. He was almost the only nation-wide political "boss" we have had, and he almost made the decision which would have placed him in the White House.

In dealing with this last "almost", Mr. Flick loses patience with Mr. Tilden. That this distinguished leader, after having received an ample popular majority in the election, stood by and permitted himself to be counted out without a struggle is incomprehensible even to Mr. Flick who knows him so well. Usually he treats his subject with a sympathetic understanding of the physical frailty of the man who suffered from childhood the real and fancied ills of the hypochondriac.

Here was a man whose bent was essentially legalistic, inclined to ponder interminably the facts presented, and to reach a decision only with the greatest difficulty and hesitancy. Yet he became a politician of the first rank, one of the two near-national leaders the United States has ever had. His era was one of intensely partisan rivalry, and he was "a Democrat almost before he was an American." His was the school of Jackson, Van Buren and Wright, and his training was primarily that of a self-made business lawyer. "In business he had exhibited a remarkable capacity for arranging

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gigantic mergers. . . . The ablest men of the country were proud to be associated with him. . . . His provincialism was sloughed off . . . he was respected for his sagacity, his superior judgment, and his qualities of leadership" (pp. 190-191).

Partisan politician though he was, Tilden had faith in the essential goodness and rightness of the American people. He refused to believe, throughout the electoral contest for which he is famous, that the will of the people could or would be thwarted. Not until it was too late did he fully realize that popular indignation would not rise high enough to defeat the plans of the Republican Party for stealing the election.

Following the election of 1876, Tilden busied himself with the minutiae of politics under the doubtful cover of superficial inactivity. He took no positive, aggressive stand on any issue and occupied himself with constant conferences with party leaders and the preparation of a lawyer's, rather than a politician's, case on who should count the vote. He believed that the decision would be made by a court, or, at any rate, by judges legally trained. His task, therefore, was to secure a count by a favorable tribunal. In this he failed—not because such a tribunal could not have been secured, but because he neither supplied leadership to his cohorts nor permitted them to take the necessary initiative. He gave contradictory advice and orders, disavowed frantic efforts in his behalf, let none know—through him—what others were doing, and discouraged the attempts of his friends to consult together without his presence. The occasion called for a vigorous expression of a Rooseveltian personality, inspired by strong emotional or spiritual conviction. But Tilden was incapable of harboring any such impulse.

In his chosen policy he stuck to habits formed earlier in his career. Consultation, debate, argument and cogitation were the breath of life to this "little, sallow-faced, shambling dyspeptic" who could not reach a decision in this crisis. Throughout his lifetime this failing plagued him. Even those who knew him best and trusted him most found his indecision intolerable.

The story of the disputed election of 1876 is told in great detail and is painstakingly documented. The question of the legality of Hayes's election lies, says Mr. Flick, in the validity of the vote of the Negroes in the Southern states. If they had the right to vote, then Hayes captured South Carolina and Louisiana, whereas Tilden secured Florida and thus became president in all but office. "Although Hayes as President was undoubtedly the beneficiary of fraud,

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yet, had Tilden triumphed, he too would have been the beneficiary of fraud. The difference was not one of fact but of degree." After citing other writers to the same effect, Flick states that "Consequently this question may be regarded as settled."

The part actually played by Tilden during the final months of struggle will probably never be known. As the author points out, much of Tilden was hidden by those friends who, at his request, destroyed posthumously those of his papers which they considered "derogatory" or "immaterial". The historian can only weep with Mr. Flick for the fate of eighteen trunk-loads of letters and miscellaneous writings which were destroyed, with few exceptions, by those zealous preservers of a fictitious Mr. Tilden. Their efforts have made it well-nigh impossible for his successors to profit fully by his example or to understand the man as he actually was.

Tilden's career has always been mysterious, and Mr. Flick has not clarified the points which have heretofore confused those who have attempted to catch a picture of the complete man. Throughout the volume one gains conflicting views of Tilden as continually progressing yet constantly procrastinating. Could it have been that Tilden tended to deteriorate or lose the quality of decisiveness? If so, it has never been made clear that he possessed this quality. Yet he must have, for he became a political leader whose advice was sought and followed. He was the possessor of a "scientific mind" which weighed judiciously each scrap of evidence and then proceeded to rearrange these scraps in a purely logical manner. As governor he fought Tammany and the Canal Ring on their own grounds and won. He did not strike the final blow, yet he defeated them decisively.

Again, he is praised as a wealthy and successful business man and corporation lawyer whose ethics—"measured by the standards of his day — were hardly censurable." But did he carry these "hardly censurable" ethics into politics? He was "a past-master in political psychology and in political mechanics—cold hearted, gruff and merciless—egotistical, opinionated and self-centered." Yet he drove his associates frantic by his procrastination. These inconsistencies are not resolved, and the impression is given that the biographer has become infected with his subject's indecision. Especially is this true of the final chapter of summation.

James Kirk Eads

Indiana University

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BOOK NOTES

De Tocqueville, who is all but forgotten in his native land, France, is still fairly well known in America. And the explanation is his famous book *Democracy in America* which, though written in 1835, still holds a high place among the books on America written by foreigners. Mr. J. P. Mayer's study, *Alexis de Tocqueville: A Biographical Essay in Political Science* (translated by M. M. Bozman and C. Hahn; New York, The Viking Press, 1940; xvii, 233 pp. $3.00), is even smaller than it looks. It is a brief survey of his political and social views, and follows closely—sometimes too closely—the admirable work of Antoine Redier, *Comme disait M. de Tocqueville*. In the opinion of Mr. Mayer, de Tocqueville is a great, original political philosopher, comparable to Aristotle and to Locke. The author's enthusiasm for his hero is commendable, but his judgment is not convincing. De Tocqueville's keen and penetrating mind, his sound and careful scholarship, and his "frozen logic" combined to make him a first-rate analyst of political and social conditions. But a first-rate thinker he was not. The real significance of de Tocqueville lies in the fact that he was "a liberal of a new kind" that the author does well to emphasize. By family and temperament an aristocrat, he detested the bourgeois liberals of his day, especially Thiers. He also dreaded the revolutionary mobs that, in France, began in terrorism and ended in the Caesarism of the Napoleons. Yet he was convinced that democracy was inevitable in the future. The problem was how could democracy be reconciled "with respect for property, with deference for rights, with safety to freedom, with reverence to religion". America, he was convinced, had solved this problem through new political methods and through a wide diffusion of property. In his *Souvenirs*, which the author rightly ranks "among the abiding masterpieces in the literature of political memoirs", de Tocqueville shows how France failed to solve the problem because of bourgeois class rule under Louis Philippe which led directly to the mob violence of the Revolution of 1848 and indirectly to the dictatorship of Napoleon III. The value of Mr. Mayer's book is that it is a good introduction to the work of a political philosopher

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whose writings take on a new significance in our day. As in 1848, the world is now confronted, on the one hand, by revolution and, on the other, by dictatorship. — J. SALWYN SCHAPIRO, The College of the City of New York.

Ideas Are Weapons (New York, The Viking Press, 1939; xiv, 553 pp. $3.50) is a collection of the periodical writings of Max Lerner, ranging in time from 1931 to 1939 and in scope through a wide category of subjects from John Marshall to Jim Farley, from Swift to Pareto. Here, in a book valuable for the luster of its style alone, are chronicled the experiences of a liberal collectivist mind in the depression and pre-war period. Those already familiar with Mr. Lerner's reviews and essays will find that they gather force when massed between the covers of a single book. Among other contributions, the volume contains one of the most cogent expressions of the functional theory of ideas; a set of illuminating essays on American legal thought and constitutional history; an intelligent approach to the liberalization of the Marxist tradition; a moderate, capable defense of historical materialism; a sharp analysis of the vestigial Manchesterianism of Walter Lippmann; and, not least, an impressive demonstration that progressive thought in America need not be humorless, lifeless or doctrinaire. Mr. Lerner has forged some keen-edged weapons; but it is a sad commentary on the possibilities for progressive political action in this country that one of its most capable advocates has little more to propose than a T.V.A. yardstick for the opinion industries. The appearance of this volume greatly strengthens the arsenal of the progressives; but other weapons have rusted there. Mr. Lerner, vigorous and hopeful as he is, does not entirely escape the pall of frustration that hangs over his colleagues on the liberal left.—RICHARD HOFSTADTER, Brooklyn College.

This collection of essays, *Law and Politics: Occasional Papers of Felix Frankfurter, 1913-1938*, edited by Archibald MacLeish and E. F. Prichard, Jr. (New York, Harcourt, Brace & Co., 1939; xxiv, 352 pp. $3.00), written over a period of three decades, reveal qualities of mind and heart that should make for a great liberal career for Mr. Justice Frankfurter on our highest court. This reviewer has gained the following general impressions from reading these interesting essays. No man in the history of the Republic has been appointed to the Supreme Court of the United States who has been more clearly aware, at the time of his appointment, of the fact that the majority members of that court in many great constitutional cases "are conscious molders of policy instead of the impersonal vehicles

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of revealed truth". Well may Librarian MacLeish in his Foreword state that "no one who reads this book can doubt that Mr. Frankfurter in his capacity as a Justice of the Supreme Court will think of the labor of that court as a labor of statesmanship." No one in public or academic life has written more penetratingly or has understood more fully the significance and the implications of the legal techniques of that liberal triumvirate — Holmes, Brandeis and Cardozo—than the author of these occasional papers. No one at the time of his appointment to the Supreme Court of the United States was so fully versed in constitutional history and constitutional theory as Mr. Justice Frankfurter and few have been so well informed of the intricacies of social and economic facts with which present-day government must deal. None of his colleagues on the bench, prior to their elevation, have shown that rare type of intellectual courage and independence of thought evidenced by Frankfurter's support of La Follette in 1924 and by his public protest of the indecencies of the Sacco-Vanzetti and Scottsboro cases. Add to the foregoing qualifications a literary artistry that has been surpassed by few, and you have the makings of a great liberal jurist. *Tempus omnia revelat.*— FORREST REVERE BLACK, Washington, D. C.

A characteristically American adaptation of the rules of legislative procedure is treated thoroughly for the first time in a study published under the title *Filibustering in the Senate* (Princeton, Princeton University Press, 1940; xi, 252 pp. $2.50) by Franklin L. Burdette. The book undertakes to tell the story of parliamentary obstruction in the Senate from the days of John Randolph's eccentric loquacity through the days of Huey Long's impassioned oratory down to the recent skirmishes of 1938-1939. It is the author's purpose, in addition to presenting the saga of Senate filibusterers, "to discuss the parliamentary devices utilized for restraint of the practice; and to survey the arguments both for and against the Senatorial privilege of virtually unlimited debate . . ." (p. viii). In pursuing these objectives, Mr. Burdette sets out to relate in narrative form the development of the filibuster as an instrument of parliamentary policy and strategy, the period of the unrestrained use of the weapon, and the apparently growing sentiment for the application of some kind of effective closure. Here the reader will find described with commendable clarity and precision of style the famous Senatorial guerrilla warfare on such measures as the "Force Bill" in 1890-1891, the Aldrich-Vreeland Currency Bill in 1908, the Armed Ship Bill in 1917, the World Court protocol in 1926, and

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the extension of the N.I.R.A. in 1935. Here are told in interesting detail the individual exploits of "Bob" La Follette, Sr., of Reed Smoot, of the inimitable "Kingfish". Here is painted the picture of the dignified and solemn Senate of the United States wriggling with impatience as it is forced, in the course of debate on important legislation, to listen to instructions on frying oysters, to the recipe for Southern "potlikker", to endless readings of *Aesop's Fables,* to exhaustive biographical sketches of Confederate heroes. After the completion of this narrative, which sometimes suffers—unavoidably and as gracefully as possible—from a long repetition of case after case in which obstructionist tactics are used, the author turns to an interesting and valuable concluding chapter. In a well-organized and carefully written essay he states the dilemma of the legislative chamber, classifies the different types of filibusters, lists the conditions most conducive to their success, and indicates the faltering steps taken since 1908 toward a gradual reduction of unlimited freedom of debate. He concludes his study by listing and discussing the arguments for and against filibustering. With remarkable restraint he saves for the last page of his treatise a suggestion that perhaps the dilemma could be solved by "a system of majority cloture applicable upon a particular measure after unlimited debate for a specified minimum number of days" (p. 240). The chief regret one feels on laying down this valuable volume is that the author contented himself largely with narrative and exposition. The results of his detailed investigation are not used as the basis for a firm conclusion on the desirability of unlimited freedom of debate in the Senate. Mr. Lindsay Rogers, in his still classic treatment of *The American Senate*, has very forcefully presented the argument for such freedom, even though it must mean the possibility of filibuster. Mr. Burdette undoubtedly disagrees with much of this. It is unfortunate, perhaps, that the only intensive study of this significant practice should be restricted, for the most part, to an analysis and description of its workings. One could wish the author had felt obliged to take a more pronounced stand on the curtailment of filibustering in the Senate. — VINCENT M. BARNETT, JR., Williams College.

In this book—*Politics and Public Service* (New York and London, Harper & Brothers, 1939; xii, 361 pp. $3.00)—two distinguished students of the theory of government, Leonard D. White and T. V. Smith, bring their full knowledge of the practice of government to bear on the knotty problem of maintaining a non-political

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civil service in a democratic state. Professor White, former federal civil service commissioner, joins with his Chicago University colleague, Congressman Smith, philosopher, in a candid and penetrating appraisal of the extent to which the party system in our democracy can dispense with patronage in the interests of a competitive civil service selected solely on merit. Convinced of the need for a skilled administrative personnel to conduct the business of government in this age of increasing specialization, it is the authors' contention that party politics in America will not suffer if the merit system is extended to all but policy-determining officials. They arrive at this conclusion by showing that lack of patronage has failed to dampen political ardor in local and state contests, notably in Wisconsin and such cities as Dayton and Cincinnati. Ideas, they believe, can be just as potent weapons in the battle for party preferment as promises of jobs. Even James A. Farley has been willing to say that a major political party can be built in the United States without the lure of patronage. Today, with two thirds of the states lacking genuine merit-system standards of recruiting personnel and Congress unwilling to implement the proposals of the President's Committee on Administrative Management, the attainment of the objectives endorsed by Messrs. White and Smith still awaits realization. To this end they urge necessary legislation and adequate appropriations for enforcement, and emphasize particularly the desirability of giving the governors the power to blanket state employees into the civil service. Insistent though the authors are on the need to divorce politics from the civil service, they pay generous tribute to the politician in the political fabric of our democracy, and credit him with the status of a necessary specialist in the efficient working of the democratic machine. As they view it, both the politician and the non-political civil servant are essential for the successful functioning of the civic art in America. But the authors have no illusions about the prominent rôle patronage continues to play in party tactics, and though they suggest legislative remedies to redress the evil, implicit in their shrewd discussion is their realization that a fundamental modification of current political practices must await a transformation of public opinion. Such a change they profess to see possible in a democracy growing increasingly better educated and correspondingly more appreciative of equal opportunity as a truly democratic standard of recruitment for public service.—SIDNEY I. POMERANTZ, The College of the City of New York.

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Robert Moses, New York's efficient park commissioner, has written a "stimulating and provocative" book—*Theory and Practice in Politics* (Cambridge, Harvard University Press, 1939; vi, 78 pp. $1.00). Delivered originally at Harvard as the Godkin Lectures for 1939, these two papers are certainly controversial, as Mr. Moses, paying tribute to the forensic abilities of William Graham Sumner, hoped they would be. Recognizing the wide gap between theory and practice in the solution of the problems of politics, the author, labeling himself "an honest conservative", draws on his own experience as an administrator in analyzing various questions of more than passing interest in a democracy. He has arresting opinions about trends in New Deal governmental policies, the maintenance of civil liberties in a free country, Wilsonian idealism, pensions for government employees, proportional representation in New York City, training for public service, the city manager as an executive, and long-range planning. He is at his best in his analysis of the executive, both public and private, in his emphasis on the weaknesses of city-manager government, and in his observations on city planning in an airplane age. On other matters, however, his arguments are not quite so convincing. He is unstinting in his praise of Woodrow Wilson, who sought to put theory into practice, but he has no good word for the theoreticians of the New Deal, who presumably were and are actuated by equally idealistic motives. He creates the distinct impression that in a democracy controversial issues involving civil liberties might better be avoided, though it is possible that if consistently followed, such a policy would make a dead letter out of the Bill of Rights. He does not appear sympathetic to programs of political action that might tend to provoke manifestations of racial or religious bigotry, and yet it can also be maintained that the surest way to destroy intolerance is to bring it out into the open. He has harsh things to say about New York's new city charter and is especially critical of proportional representation, but it is a question whether the facts he relies on effectively support his position. Nor can one accept without qualification his remarks about the unemployment situation, so vague and fragmentary is the suggested solution.—SIDNEY I. POMERANTZ, The College of the City of New York.

The International Studies Conference, "a permanent organ of cooperation, liaison, and coordination for national institutions engaged in the scientific study of international affairs," devoted the years 1935-1937 to research on the subject of peaceful change.

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Scholars from about twenty countries (excluding Germany, Italy, Japan and the Soviet Union) studied various aspects of the project, held occasional international meetings, and submitted their findings to coördinating officers called secretary-rapporteurs. Then, during the summer of 1937, the Tenth International Studies Conference met in Paris for a general consideration of the whole problem. A volume entitled *Peaceful Change: Procedures, Population, Raw Materials, Colonies* (Paris, International Institute of Intellectual Co-operation, League of Nations, 1938; 685 pp.) embraces the record of this research and these discussions. The book opens with five summary "introductory reports" (by the respective secretary-rapporteurs) on procedures of peaceful change, the Danubian problem, and the questions of raw materials and markets, population pressure, and colonies. Each of these documented reports consists of a lucid statement of the problem, an enlightening historical background, and a scholarly analysis of several proposed solutions. Then come the records of the round-table and plenary meetings of the conference and the final report of the general rapporteur. Lastly, there is a convenient list of the memoranda submitted to the gathering, supplemented by a useful annotated list of books on the stated and allied problems catalogued in the library of the League of Nations. There are no charts, graphs or tables, but there is a good index. The most important conclusion reached by the conferees was that there exists "the need for a certain international organization to meet the most urgent requirements of the present day. . . . Whether it be a question of migration, of the supply of raw materials or of the colonial problem, the efforts made to find solutions to these questions invariably follow a natural path toward organic formulas, where international anarchy retreats to make way for cooperation." The European war that broke out in September 1939 appears to have rendered academic any current discussion of peaceful change, but the facts and proposals brought together in this volume may yet prove to have great practical value if ever the questions of population pressure, colonies, raw materials and markets find their way onto the agenda of an international diplomatic conference. — WALTER CONSUELO LANGSAM, Union College.

"The most certain test", said Lord Acton in one of his happiest sentences, "by which we judge whether a country is really free is the amount of security enjoyed by its minorities." If we apply the same elemental but rigid test to the countries of the Near East, then, as is indicated in the compilation—*Some Aspects of Religious Lib-*

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erty of Nationals in the Near East: A Collection of Documents, compiled by Helen Clarkson Miller Davis (New York and London, Harper & Brothers, 1938; xviii, 182 pp. $3.00)—at least legally Turkey, Syria (including the Lebanon), Palestine, Transjordan and Egypt (including the Sudan) are free countries. The documents here presented constitute the Magna Carta of the religious minorities in these countries (in reality there are no other minorities in the Near East). The selected compilation is preceded by lengthy, illuminating but over-optimistic "Comments". As Chairman of the Religious Liberty Group (for whom the study was undertaken), Professor Joseph P. Chamberlain contributes a brief "Foreword", and the appendices contain relevant portions of the League Covenant and the personal status codes in French mandated territories. Altogether it is a useful and welcome work. One only wishes that the author's "Comments" were leavened with more critical observations, and also with a knowledge of pre-war conditions, for then perhaps she would have avoided the sanguine outlook which she derived from reading what is found in statute books.—A. O. SARKISSIAN, New York City.

The Geneva Research Centre is a private organization devoted to the advancement of international relations which in the last ten years has published numerous studies concerning legal, economic and political problems. The comprehensive book under consideration, *Swiss-American Economic Relations,* by Dorothy Grant Jacquelin (Geneva, Geneva Research Centre, 1939; xx, 295 pp. $0.80 or 3.50 Swiss francs), is a doctoral dissertation for the Graduate Institute of International Studies in Geneva. It shows us in its first part the whole history of Swiss-American commercial relations since 1848, the year of Switzerland's first federal constitution. Up to 1914 Switzerland had a system of free trade which, later on, was changed into a policy of mild protection; the United States on the other hand reinforced her already protectionist policy. In 1931 Switzerland changed her commercial policy completely, perhaps in consequence of the Hawley-Smoot tariff which heavily affected Swiss exports to the United States. Since "there is probably no country more dependent on foreign trade for its national well-being" than Switzerland, these prohibitive, autarkical tendencies of America were of no assistance for Swiss economics. The third part of this case study of the possibilities of lowering existing barriers to international trade deals with the recent commercial agreement between the two countries. Under Roosevelt's second

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administration a reciprocal trade program was applied, by which both partners made substantial concessions; the desire to stem the tide of economic nationalism made it possible to allow tariff reductions and to increase quotas. The author presents an introduction to physical and social aspects of Swiss economics as well as two chapters on Swiss agriculture and industry. This analysis of Switzerland's economic evolution is of special interest for American readers who very often have an erroneous idea of little Switzerland's importance in world economics. Since this study was published before the present war in Europe, it is for that reason of particular interest. In times like ours, policy rules over economics, and therefore a survey of Swiss-American economic relations has its political significance also. As the author points out in her summary, common political and social ideals of the *Confoederatio Helvetica* and the United States, and their democratic and federative institutions make these two peaceful and neutral countries, both protagonists of liberty, friendly sister republics. They will continue their efforts to develop international relations in spite of all strife and violence caused by chauvinism and totalitarianism.—PAUL UCKER, San Francisco, Cal.

A discussion of some of the broad social as well as specific economic implications of the shorter-hour movement in the United States is available in a compact little volume, *Shorter Hours—How? When?* (Washington, Ransdell, Inc., 1938; viii, 128 pp. $2.00) by Henry Gavens. The author's point of view is more that of the analyst than that of the apologist for shorter hours. Dissenting from those who treat the question in terms of purely humanitarian values or simply as an expedient to create employment, the author attempts to visualize all aspects of a highly complicated social problem. The effects of shorter hours upon three economic groups—the employers and their costs of operation, the workers and their welfare, and consumers and their living standards—are considered. Both the disadvantages and benefits of shorter hours as they affect each of these groups are carefully presented. Perhaps the most important aspect of shorter hours is their effect upon the volume of production. Will a shorter work-period reduce output? To this question there is no categorical answer. The conclusion of the author that "lengthening hours does not necessarily increase production any more than shortening them necessarily decreases it" (p. 65) corroborates the opinion of other writers on this subject. Upon the foregoing conclusion—the point which the author seems to stress most of

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all—he bases his warning against further reduction of hours until we can be sure that a diminished output will not accompany such a reduction. In the chapter on unemployment the author has advanced a few generalizations the validity of which is open to question. For example, it is stated that "labor as a class need not fear technological employment in the long run: it is the individual who may suffer" (p. 80). Again, one reads: "it is only in periods of depression that labor, as a whole, need fear unemployment" (p. 87). More data than are provided in this analysis are needed to substantiate these observations. Although this clearly-written book is not without its shortcomings, it presents an admirable recapitulation of the important factors which are related to the problem of shorter hours. The book should be especially useful and interesting to the general reader. —ROBERT L. CAREY, Columbia University.

Unlike most of the books which have appeared in the past few years on industrial relations, *Management and the Worker* (Cambridge, Harvard University Press, 1939; xxiv, 615 pp. $4.50), by F. J. Roethlisberger and William J. Dickson, is not concerned with unionism or collective bargaining. Its chief interest lies in the human and the psychological, rather than the economic, aspects of industrial relations. It grew out of a desire to enrich industry's knowledge of the intangible factors "that affect the morale and productive efficiency of shopworkers" (p. vii). The study is the product of a twelve-year collaborative effort between the Western Electric Company and Harvard University. As a result, it is characterized by academic inquisitiveness and businesslike realism. The methods evolved by the investigators as well as their findings should be of considerable interest to executives in industrial plants and students of personnel administration. Unfortunately, the ponderous appearance and complicated organization of the volume will discourage all but the most conscientious and painstaking readers. The experiment, which was conducted at the company's Hawthorne Works in Chicago, included at times as many as 20,000 employees. Dealing with the general subject of maximizing labor's participation in production, it throws new light on the relationship of rest periods, shorter hours, illumination, health, fatigue, monotony, and wage incentive plans to the output of industrial wage-earners. The authors challenge customary conclusions regarding the effect of changes in these physical and economic variables. They contend that variations in work behavior are far more closely correlated with the personal attitude on the part of employees toward these changes than with

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the changes themselves. In a chapter entitled "Implications for Personnel Practice", the authors claim "that any human problem, in order to be understood, must be referred to its context and that the basic consideration, both for personnel research and personnel practice, is that of understanding the various work situations in which these problems occur and of specifying the factors making for or against equilibrium in the total situation" (pp. 590-91). Consequently, they favor an orientation on the part of personnel management toward concrete human situations. A personnel counseling program would include interviews of problem cases which would be handled on an individual rather than on a statistical basis. In this scheme of things, "industrial comforters" would act as "catalytic agents" in resolving human conflicts in industry. As a result of this study, management has acquired a clearer picture of the effect of its policies on the employees. It has learned how to deal more adequately with human situations in industry and how to improve relations with its employees. According to the sponsors, this is the principal contribution of this long but unfinished experiment.—MURRAY ROSS, Brooklyn College.

The sub-title of *South of Joplin*, by L. S. Davidson (New York, W. W. Norton & Co., Inc., 1939; 290 pp. $2.75), "Story of a Tri-State Diggin's", perhaps indicates that its author regards it as a story rather than a factual study. Its main subject matter, the events of 1937-8 in the zinc-mining area known as the tri-state district (because it includes the southwest corner of Missouri, the southeast corner of Kansas and the northeast corner of Oklahoma) which ensued when C.I.O. organizers tried to gain a foothold where a "company" union held the field, is likely to mislead students in the field of social sciences into supposing it to be a serious factual study, and they should be warned that that is not the case. The "story" portrays the district as one inhabited by ignorant people, talking a patois something like that of "mountain whites", and intensely intolerant of strangers (whom they characterize as "furriners"), all living in the direst poverty, and with nothing to brighten their lives except religious revivals, Klan activities and fights. Some of the events related, such as the killing of a picket by company men and the invasion of Oklahoma by Kansas militia, are demonstrably untrue, but the main effect is gained by the technique of suppressing all mention of the good features of social conditions in the district, and grotesquely distorting the unfavorable ones. A good example of the technique used occurs on page 14,

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where the author tells how an Indian tried to kill her (about 1918) because she said Indians should be grateful to the government for giving them land. What actually happened was that the Indian caught up with her, while she was walking home from high school, and offered to let her ride his horse. The district is one that deserves serious treatment by a sociologist, for the problem of maintaining employment with output sharply reduced, and zinc at an exceedingly low price (averaging under 4 cents per pound for the five years 1931-5), has been indeed a serious one in recent years. A careful study might contribute to a solution of the problem, but such a "story" as this will only further complicate it.—THOMAS T. READ, Columbia University.

The Suez Canal has become a subject of increasing interest in recent years. A very important monograph — *Der Suez-Kanal im Weltkrieg und in der Nachkriegszeit: Eine völkerrechtliche Studie* (Berlin, Verlag Karl Siegismund, 1939; 89 pp. 3.–) by Hartmann Freiherr von Richthofen—examines in a critical manner the operation and the effectiveness of the Suez Canal Convention of 1888 during the World War and the post-war period. Following a rather brief summary of the situation up to the establishment of the British Protectorate over Egypt in 1914, it deals minutely with the effects upon the Convention of the War, the Peace Treaties, the Anglo-Egyptian Treaty of August 1936, Articles 16 and 20 of the League Covenant, the Kellogg Pact, and the problems raised by the Ethiopian conflict. It points out that from 1914 to 1936 the international position of the Canal remained in the same unsettled condition as that of the status of Egypt itself. In the Treaty of August 1936, Egypt was recognized as a sovereign state and assumed the authority which the Convention had bestowed upon Turkey. This arrangement, as the author states, is hardly satisfactory since it imposes too heavy a burden upon Egypt and exposes it to pressure from the Great Powers. Moreover, it is conceivable that Egypt might one day become a belligerent and demand the right to close the Canal to enemy shipping, an act prohibited by Article I of the Convention, which provides that the Canal shall always be free and open to all vessels in time of peace or war. It is the opinion of the author that the Signatory Powers should renounce their rights under this article in order to avoid such violations of the Convention as occurred during the World War. There is no doubt that clarification is needed concerning the legal position of the Canal. At the present time no common agreement exists as to how great an influence the League

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Covenant and the Kellogg Pact have upon that position, nor as to who should interpret the provisions of the Convention. The latter is a very incomplete instrument for the protection of shipping through the Canal. Richthofen's scholarly monograph gives an excellent discussion of the defects in the Convention and shows the need for its revision. It is one of the best treatments of the subject.—CHARLES W. HALLBERG, Queens College.

Balkan life and politics have been everybody's subject. The facts are sufficiently vague and the trends sufficiently mixed to give a chance of drawing a plausible story to anyone who dips into the Balkan bag. Professor Joseph S. Roucek has made the subject his own, and in *The Politics of the Balkans* (New York and London, McGraw-Hill Book Company, Inc., 1939; xv, 168 pp. $1.50) he gives a new and good sample of his knowledge and skill by providing in a short compass a remarkably detailed and clear picture of the state of things in that interesting and exasperating region. Hardly an aspect of the subject is overlooked, and both the internal affairs of the several countries and their mutual and international relations find a place in the scheme of this useful book. Professor Roucek begins with two chapters of general considerations which introduce the reader into the complicated pattern of the subject. He then deals separately with Rumania, Yugoslavia, Albania, Greece and Bulgaria, with an additional chapter on the Macedonian revolutionary movement. At the end he ties these several strings together again in a short but pointed discussion of Balkan policy and prospects. Professor Roucek does not hesitate to put his finger on all that is weak and arbitrary in the social and political life of those countries, concluding that they are still faced with the likelihood of a conflict of economic interests and general outlook between country and town. Sooner or later the dictatorial shackles which keep that antagonism in check will have to give way to something like a popular government, when the now subdued issues will rise to the surface again. The one factor which is left out of the story, because of the scheme of the book, is a description of Turkey's part in whatever change there has been for the good in Balkan relations in the last few years. Turkey can no longer be well listed as a Balkan country, but she supplies the exception which would prove Professor Roucek's point, because she has worked out her remarkably successful national reconstruction from the bottom up, so to speak, so that her authoritarian régime enjoys popularity and respect. Largely because of that internal solidity, the one-time "sick man of the Balkans" has become

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the leader of the Balkans in the movement for coöperation and consolidation; and so disinterested and intelligent have been her efforts that there seems a good chance at long last for a Balkan understanding, if not yet for a Balkan union. How greatly and urgently that is needed is well summed up in Professor Roucek's remarks that "If the plans of Hitler mature, the proverbial 'Balkanisation of Europe' will be reversed into the 'Europeanisation of the Balkans'—much to the misfortune of the latter" (p. 25).—DAVID MITRANY, The Institute for Advanced Study, Princeton, New Jersey.

John H. Ferguson's *American Diplomacy and the Boer War* (Philadelphia, University of Pennsylvania Press; London, Oxford University Press, 1939; x, 240 pp. $2.50; 11*s.* 6*d.*) is an excellent and timely study of a subject which sheds important new light on the tribulations of a neutral while the British Empire is at war. Aside from diplomacy, there are interesting contributions on British imperialism, American public opinion, and particularly on Boer propaganda in the United States. The central theme is that the Washington government, inspired by the rabidly pro-British John Hay, maintained such a strict hands-off policy, despite strong pro-Boer pressure, as materially to help the British cause and harm that of the Boers. The State Department made no effort to uphold neutral rights in general (Britain flagrantly violated Portuguese neutrality) but moved, somewhat mechanically, only when American interests were directly involved. In addition, the Anglophile predilections of the administration effectively spiked the rather hesitant Russian and German overtures for joint mediation. Thus Britain collected rich dividends for a similar service to the United States early in 1898, and for a not dissimilar benevolent neutrality in the ensuing war with Spain and the insurrection in the Philippines. It is evident that throughout the conflict in South Africa the governments of both the United States and Great Britain were solicitous of nursing rather than strangling the newly born *rapprochement*. The reader will also be interested in the incompetence and partisanship of the various American consular representatives; the impropriety of appointing John Hay's son to the consular post at Pretoria (incidentally, the young man appears to far better advantage than his father); and the characteristic willingness of the Americans to sell large numbers of mules and other supplies of war for the crushing of an uprising with which they professed to sympathize. The author is to be commended for the thoroughness of his research among unpublished papers, and although the British records are not avail-

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able, it is doubtful if they contain material that will alter the main lines of his account. While it is true that the monograph is primarily concerned with diplomacy, the reviewer hoped for a more extended analysis of press opinion, and he is inclined to believe that sentiment for the Boers in America, though probably that of a majority, was less overwhelming than this study represents. It must not be forgotten that the Irish-American, German-American, and other pro-Boer elements were extraordinarily vocal, while those who were pro-British or genuinely neutral had much less incentive and talent for agitation.—Thomas A. Bailey, Stanford University.

Last year France and the world celebrated or commemorated the 150th anniversary of the French Revolution. M. Georges Lefebvre, professor of the history of the French Revolution in the University of Paris, has celebrated it in a fresh survey of the year 1789, *Quatre-vingt-neuf* (Paris, Maison du Livre Francais, 1939; v, 252 pp. 25 francs). The book departs from the customary treatment of the subject. It has no introductory chapters on classes and conditions of life under the Old Régime. Instead, each class is taken up as it played a rôle in reducing the royal power. M. Lefebvre describes in fact four "revolutions", the aristocratic, the bourgeois, the popular and the peasant. This method, although it interrupts the rush of events, has the effect of causing the reader to take each group carefully into consideration. We are less familiar with the acts of the aristocracy and the peasantry than with those of the bourgeoisie and the urban populace. In truth, it was the aristocrats, a "nation within the nation", who first took advantage of the weakness of Louis XVI to undermine the prestige of the government. As Chateaubriand wrote: "The patricians began the revolution; the plebeians finished it." M. Lefebvre's discussion of the peasants is particularly worthy of attention because of his own researches on their status and on the Great Fear. It should be remarked, however, that he does not permit his special interest to let him put aside the rules of proportion: for example, he telescopes his whole volume on the Great Fear into a section five pages in length, while devoting a chapter each to the Declaration of the Rights of Man and the October Days. The present book shows, indeed, the author's familiarity with all aspects of the revolutionary movement. Moreover M. Lefebvre, like every true historian, recounts and interprets the story according to contemporary documents rather than to preconceived notions. At the same time he recognizes full well that different eyes have seen and will continue to see different things in these same documents, notably

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in the Declaration of the Rights of Man. His able, sympathetic portrayal of the "ideas of 1789" can hardly fail to win the applause of like-minded students of the Revolution and to command the admiration of those who think otherwise. It serves also to remind us that the battle over the ideas is far more than a scholarly exercise. —CARL LUDWIG LOKKE, The National Archives, Washington, D. C.

As Mr. Oscar Krisen Buros indicates in his preface to *Research and Statistical Methodology; Books and Reviews 1933-1938* (New Brunswick, Rutgers University Press, 1938; vi, 100 pp. $1.25), it is necessary for all those who teach statistical methods to present to their students the latest developments consonant with the level of the course. For the instructors who wish to do this, this book undoubtedly will be of some value. It is an attempt to include in one publication lists of all the books on statistical and research methods which have been published within the given period. For each book listed there are a few statements taken from the reviews. The purpose of the volume is to give as clearly and as quickly as possible the informed opinion on all recent books on statistical methods. Each book listed is numbered. This makes possible three different indexes. One classifies the books by numbers according to subject matter or type. There is an index of titles and an index of authors, both of which use the numbers of the books as a reference key. The body of the book is further arranged alphabetically by authors. The method used in presenting the reviews is to quote a number of statements indicative of the subject matter thought worthy of special mention by the reviewer and his opinion of the book in question. A single asterisk is used to indicate a deletion. A comparison of some of these condensations with the original reviews shows that, despite the difficulty of the task, a reasonably high degree of clarity and continuity is retained. Of course, only summary statements are usually printed, but there seems to be no set limit as to the length of the summaries with the happy result that one does not feel that one is reading a rapid-fire advertising prospectus. On the whole, a fair conclusion seems to be that this book is of value to those who find it very difficult to follow current literature; and to those who can follow current trends from day to day, so to speak, it should serve as a useful reference and reminder.—MORTON S. NAGELBERG, Columbia University.

In a French translation, *Contrôle législatif de l'extrémisme politique dans les démocraties européennes* (Paris, Librairie Générale de Droit et de Jurisprudence, 1939; 136 pp.), Karl Loewenstein, professor of political science at Amherst College, has included a few

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paragraphs on the effects of the Munich Conference which had not yet taken place when the original work appeared in English in 1938. Mr. Loewenstein argues that the results of Munich do not invalidate his earlier contention that the measures taken by Czechoslovakia were the most effective legislative self-defense of democratic institutions enacted by a European state. In his view, the events of September 1938 showed that the Czechoslovakian government had and used adequate powers to resist the subversive activities of the Sudeten German party. He attributes their success entirely to the pressure from outside the country. Mr. Loewenstein has made a comprehensive survey of the attempts to defend democratic institutions from subversion, particularly by anti-democratic parties of the Right, although protective measures against Communism are not neglected. The author is conscious of the inherent difficulty of defending freedom by restricting freedom; after weighing the evidence, it is hard to escape the conclusion, which is not, however, the author's own, that the only real safeguard of democracy is a favorable moral climate.—J. W. PICKERSGILL, Ottawa, Canada.

North Carolina left the Union unwillingly, after a bitter internal struggle. This is the theme of *The Secession Movement in North Carolina* (Chapel Hill, The University of North Carolina Press, 1939; vii, 285 pp. $3.00) by Joseph Carlyle Sitterson. As Dr. Sitterson points out, the leaders in the movement for a dissolution of the Union were found in the planter group of the East where a slavery régime similar to that of the lower South existed. Some leaders of this section perceived a relationship between expanding federal powers and the security of the slave régime. The piedmont and mountain districts, containing fewer slaves and possessing a more diversified economy, regarded the anti-slavery movement with less foreboding. The small landholders of the up-country had for generations struggled against the domination of the coastal plain in state politics. Moreover, there was the opposition of the Quakers and of the artisan class who thought the slave robbed the freeman of his wages. Both the Democratic and Whig parties defended slavery in the abstract. But the Democrats dominated the middle eastern plantation-slavery region, while the Whigs were strongest in the western counties. It followed that the Whig leaders were generally less vigorous in their sectionalism than the Democrats. The secession movement in North Carolina was a struggle between these forces. As the conflict progressed one notices that freedom of speech, thought and action on the subject of slavery disappeared. The

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Raleigh *Register* assured Hinton Rowan Helper that if he would only return to his native state he would never be allowed to leave again, but would be given a "home in the bosom of his native soil" (p. 118). When Professor B. S. Hedrick expressed a desire to vote for Fremont for President, he was dismissed by the authorities at the University of North Carolina (p. 121). Prior to John Brown's raid, the masses never seriously considered the possibility of secession. Neither was there much disunion sentiment in North Carolina as late as Lincoln's election. The majority was willing to give the Lincoln government a trial, and a convention to consider the relations of North Carolina with the Union was rejected by popular vote. But the failure of Congress to adopt the Crittenden amendments or the recommendations of the Peace Congress, the firm stand taken in Lincoln's inaugural, the call for volunteers after the assault on Fort Sumter, and the secession of Virginia were powerful blows to Union sentiment in North Carolina. The details of the political struggle are well worked out. The economic aspects of disunion are mentioned, but occupy a much smaller bulk in the book than the contest between Whig and Democrat. The bibliography is satisfactory, though by no means exhaustive. — JOHN G. VAN DEUSEN, Hobart College.

Samuel D. Smith's *The Negro in Congress* (Chapel Hill, The University of North Carolina Press, 1940; xiii, 160 pp. $2.50) gives brief, at times superficial, sketches of the Congressional careers of the twenty Negro representatives and two Negro senators serving in Congress between 1870 and 1901, and of six of the many unsuccessful aspirants. Of interest are the uninterpreted tables in the introduction on the racial stock, education, profession and previous social status of these men, the occasional hints of the struggle within the Republican Party in the South between Negro and carpetbagger, and of the rôle of the "black carpetbaggers"—suggestions of the rich material for a fuller book that we hope Dr. Smith may write. There are references also to the prejudices which these men faced, costing Pinchback his seat (p. 27), and leading to personal insults on the floor of the House (pp. 62, 69), the death of Ransier as a penniless day laborer (p. 64), and the denial to Miller of reëlection in 1890 because his ballots "were not the legal size or color" (p. 105). Yet the author falls short of the unbiased plane for which he obviously strives. When a Negro representative evinces a strong interest in civil rights, education and the protection of the franchise, he is strictly "partisan" (pp. 23, 74); when

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he tries to establish a steamship line to Haiti, he is "laudable" (p. 46). When arguing for the support of Forts Moultrie and Sumter on historical grounds, he is "in happier vein" than when fighting white challenges to his civil rights. One may question the validity of such evaluations. Of questionable effect too are the quotations of contemporary opinions of each man, good and bad, but with the lower assessment invariably placed last, thus creating an innuendo which is no doubt unintentional but is at times very misleading. Granting that their legislative accomplishments were unimportant, if these men are studied against their origins and their acknowledged handicaps, if they are taken not only as political pawns but as symbols of the hopes and the idealism which stirred much of the North in the Era of Emancipation, and of all that Radical Reconstruction, mistaken though it may have been, seemed to promise, their position would not be as barren of historical significance as the author would have us believe.—CLIFFORD L. LORD, Columbia University.

Concurrently with the growth of the American tariff wall there has developed a system of import controls based on the administration of successive tariff acts and on the exercise of the police power of the federal and state governments. Professor Percy W. Bidwell's study, *The Invisible Tariff* (New York, Council on Foreign Relations, 1939; ix, 286 pp. $2.50), is an analysis of those "restrictions and prohibitions on American import trade which are not found in the formal schedule of tariff rates", a matter "Attracting much less attention [than the tariff] in the public press, rarely debated in Congress, and never the subject of discussion by women's clubs or business men's forums". It deals with such ramifications as marks of origin, the protection of American patent rights, unfair competition in foreign trade, bounties and subsidies on imported goods, the use of forced labor in production, import quotas, the protection of public morals, and the enforcement of sanitary regulations as regards the importation of plants and animals or their products. Part I is a review of those administrative measures designed to enforce Congressional tariff legislation and indicates the complexity of the procedure connected with the importation of goods. Part II deals with various sanitary restrictions and the protection of public health and morals, showing the wide range within which the authorities can act under the police powers of the state. In a number of countries such administrative measures as exchange control, compensation agreements, and barter deals have far overshadowed the tariff

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as instruments of commercial policy. Of these, American commercial practice has so far been found free, not from any "stronger attachment on our part to the principles of free trade", but because no acute problem of controlling the trade balance has been raised. Professor Bidwell views present-day administrative control of trade as more comprehensive than statutory tariff enactments, affecting goods on the free list as well as dutiable commodities. They are also more effective since quotas and absolute embargoes are made use of as well as tariff duties, and no legislative consent is needed for their application. Although our various regulations appear to the importer as so many obstacles to trade and hence beneficent to the domestic producer, Professor Bidwell concludes that such laws, apart from tariff legislation proper, have in most cases had quite different aims than the economic protection of domestic industry. Any protection that may have resulted from their enforcement is held to be generally incidental although regrettable. We are warned that the danger involved at present in the exercise of administrative control lies not so much in its economic effects at home as in its political repercussions abroad, which may result in reprisals and serious international complications. Here is presented for the first time a comprehensive portrayal of a system which has generally been considered as of secondary importance, with attention focused mainly on the tariff. The moral to be drawn from reading this book is that the height of barriers to international trade can no longer be accurately gauged merely from a knowledge of the schedule of duties applying to particular commodities.—WILLIAM J. STIBRAVY, Newark, N. J.

Of the multitudinous problems created by diplomatic crises and wars perhaps none has a better claim to humanitarian solution than the relatively new problem of refugees. Yet that cannot be done because the problem as we know it today is not humanitarian but primarily a political one. That fact is definitely demonstrated by *The Refugee Problem: Report of a Survey* (London, New York and Toronto, Oxford University Press, for the Royal Institute of International Affairs, 1939; xv, 638 pp. 25*s.*; $10.00) prepared under the direction of Sir John Simpson. As the most compendious *vade mecum* on the subject, it represents the labors of scores of students and should supersede all previous works, including those issued by the League of Nations. In the modest words of its Director, the work aims to be a "statement on the origins of the post-War refugee movements," but there is also a preliminary historical survey of each racial and national group of refugees considered, in addition to

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analyses of legislation enacted by the several governments affecting the status of refugees. Helpless and homeless beings have long been at the mercy of the governments of their refuge, often only protected by the moral authority of the League, for that body has rendered yeoman services through its High Commissioner for Refugees. France has been the favorite habitat of most of the refugees, while Great Britain (including the Empire) has been most consistent in restricting their admission. Smaller groups who settled in other countries (Czechoslovakia, Serbia, Bulgaria and others) have fared better than those settled elsewhere, while those being absorbed more recently by the United States (17 per cent of all German refugees) may regard themselves as a favored class. As national groups, Turkish refugees have been the most fortunate; Assyrians the most unfortunate; Russians and Armenians who have been refugees for nearly a generation are hardly better off than the Assyrians, while the fate of Jewish refugees is most precarious. Incidentally it is idle to blame dictators for the misery of all the refugees, for Russians have been cast out of the "most democratic country in the world", while Armenians have endlessly been victimized by the "most faithful ally" of the only democratic Power now fighting dictatorships. The *Survey* with its charts, maps and appendices is complete up to and including 1938, and, for the period covered, surprisingly accurate. — A. O. SARKISSIAN, Verona, N. J.

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In Memoriam

The death of PROFESSOR ROBERT E. CHADDOCK on October 21, 1940 ended a career of devoted scholarship and unremitting service. Professor Chaddock never spared himself. He labored without stint for the advance of statistical application to problems of social well-being, particularly in the fields of population and public health. He was most painstaking with his students, ever ready to help them through any difficulties. He was active as member or consultant of various social and public agencies, including the Joint Advisory Committee to the Director of the Census, the Research Bureau of the Welfare Council of New York City, the Cities Census Committee and the advisory council of the Milbank Memorial Fund. He wrote numerous articles, reports, and other contributions to sociology and statistics, including the well-known text on *Principles and Methods of Statistics.* In his many activities Professor Chaddock displayed the finest spirit of disinterested and self-forgetting coöperation. He had the affectionate regard of all who knew him.

Born at Minerva, Ohio, April 16, 1879, Robert Chaddock took his A.B. at Wooster College in 1900. He came to Columbia in 1905, and was University Fellow in Sociology, 1906-1908, being then an instructor in economics. In 1909 he left Columbia for the Wharton School, returning as assistant Professor of Statistics in 1911. From that time until his death he was a member of the Columbia staff and of the Board of Editors of the POLITICAL SCIENCE QUARTERLY.

Professor Chaddock's distinction in his chosen field was recognized on every hand. There have been few important

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developments in the statistics of population and public health to which he did not contribute. He was constantly being consulted by groups and organizations interested in these matters, nor did he ever fail to respond to any demand on him, whether from a local committee or from an international conference. He endeared himself to his own Department by his generous sympathy and his abiding loyalty. His untimely death has removed a man to whom, in the highest sense, these words associated with the last farewell apply—"good and faithful servant".

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